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**Supervisor:** Pat Hohl  
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Jim Neilson

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**Hamburg Township  
Zoning Board of Appeals Minutes  
Hamburg Township Board Room  
Wednesday, May 8, 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 & Brittany Stein, Zoning Coordinator

**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 2019-0005

Owner: Edward Murawski

Location: 10311 Kress Road, Lakeland, MI 48143

Parcel ID: 15-28-203-015

Request: Variance application to allow for the construction of a 100-square foot shed with a five-foot north side yard setback and a 10-foot east rear yard setback (10-foot side yard and 30-foot rear yard setbacks required, Sections 7.6.1. and 8.

Mr. Edward Murawski, applicant, stated that they are in a unique position because they are surrounded by alleys. There are also unusual wetlands in the rear of the property and the road right-of-way in the front. He was recently disabled and needs to park his vehicle in the garage and must move the lawn equipment, etc. somewhere else. He is asking for a minimal shed, which is 10'x10' to be placed near the north alley.

Amy Steffens, Planning & Zoning Administrator, stated that the subject site is a 7,492-square foot parcel improved with a 1,394-square foot single-family dwelling with a 360-square foot attached garage. The site is a triple frontage lot, which means that it has platted right-of-way on three sides. Single-family dwellings are located to the north, west, and south; a vacant parcel is to the east, which is developable. The site received ZBA approval in 1995 to remove an existing home and install a new manufactured home in the same location, resulting in deficient east and south yard setbacks. The ZBA also approved a variance in 1999 to allow for the construction of the attached garage, resulting in a deficient south front yard setback. Our ordinance only addresses corner lots. It does not address triple frontage lots or through lots, which is a lot that has right-of-way on two sides running parallel. When we look at a corner lot, the primary structure must meet front yard setbacks on both street frontages. Accessory structures we look at differently, because we recognize that on a corner lot, you are constrained by right-of-way. Accessory structures must meet the primary front yard setback and the side yard setback for the district, which gives some leeway for an accessory structure that may not be as impactful than a primary structure. In this case, we are looking at a primary front yard setback for an accessory structure of 25 feet and a 10 foot side yard setback. The applicant is proposing to put a very small shed in the north yard on the unimproved right-of-way side so that it would have a 5 foot setback rather than the required 10 foot. He would then have a 10 foot rear yard setback rather than the required 30 feet. In staff's opinion, this is the type of situation why variances were created. She discussed the Standards of Review. She stated that the site is constrained by the location of the existing house. The house location was created by variance, and the ZBA at that time found that the variance met the findings of fact for the request and granted the approval. That, along with the triple frontage, does mean that there is an extraordinary circumstance or condition that you may not find on other properties within the same zoning district. She stated that the shed is not necessary for the preservation of substantial property rights, but it is a customary residential accessory structure commonly found on other single family residential property. The proposed shed would have a 10 foot setback from the east property boundary which abuts a vacant lot that could accommodate a single-family dwelling and a five-foot setback from the unimproved right-of-way of Norene Drive that could be improved in the future. However, staff does not believe that the proposed 5 foot setback from an improved right-of-way would be detrimental to the public welfare. It would not create a site distance issue. The shed would be no more impactful at a 10-foot than the home would be at 10 feet. The subject property is designated Medium Density Rural Residential development in the future use map and is within the North Chain of Lake Planning Area in the Township Master Plan. This site would not change the character or the intent of the Master Plan. This site is severely constrained by the triple frontage and the way the site has been developed. The property is currently used for single-family residential and the use will not change if the proposed variance request is granted. She discussed the drawing showing the building envelope, house footprint and required setbacks. There is one compliant location for the shed in front of the main door to the dwelling. The proposed location is a less impactful location aesthetically and functionally than the single compliant location available for an accessory structure.

Chairperson Priebe opened the hearing to the public. There was no response. The call was closed.

Motion by Auxier, supported by Watson

To approve variance application ZBA 19-005 at 10311 Kress Road to allow for the construction of a 100-square foot shed with a five-foot north side yard setback and a 10-foot east rear yard setback (10-foot side yard and 30-foot rear yard setbacks required, Sections 7.6.1. and 8.3.). The variance does meet variance standards one through seven of Section 6.5 of the Township Ordinance and a practical difficulty does exist on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at 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

- b. ZBA 2019-0006  
Owner: Jeffery Settle  
Location: 10450 Kress Rd., Pinckney, MI 48169

Parcel ID: 15-28-301-001

Request: Variance application to construct a 486 square foot addition on the north facade and a 282 square foot addition on the east facade of the existing dwelling. The resulting dwelling will have a 15.9-foot east front yard setback (25-foot front yard setback required, Section 7.6.1.fn4).

Mr. Jeffrey Settle, applicant, stated that the existing dwelling setback is 15.9, and he is not asking to build any further. He is simply asking for the addition to be in line with the existing dwelling.

Brittany Stein, Zoning Coordinator, stated that this is a 14,712-square foot corner lot that fronts onto Kress Road to the east, Cordley Lake Road to the south, and single family dwellings are located to the west of the site. The existing dwelling is a one-story 1,370 square foot house, with an attached 489 square foot garage. Additionally, the site plan indicates a garage to the south of the dwelling completed in 2017, and a shed in the rear yard permitted with a variance in 2015. If approved, the variance request would permit the construction of a 486 square foot addition on the north facade and a 282 square foot addition to the east of the existing dwelling. The resulting dwelling will have a 15.9-foot east front yard setback. She discussed the dwelling's existing and proposed setbacks. As proposed, lot coverage is 42.6 percent; the Zoning Ordinance allows for up to 40 percent of lot coverage but up to 50 percent lot coverage with an engineered grading and drainage plan. If the variance is approved, the proposed project will require an engineered grading and drainage plan or the lot coverage must be reduced to 40 percent. The applicant submitted a topographic survey showing the limit of the 100 year floodplain, however the elevations are not correct, and it does need to be corrected for the Land Use Permit. She discussed the Standards of Review. She stated that this site is a corner lot requiring the primary structure to have a front yard setback from both Kress Road and from Cordley Lake Road. The required 25-foot front yard setback is intended to provide adequate space, open vistas, and privacy throughout neighborhoods and between structures on smaller residential lots. Development of a compliant single family dwelling and any additions on this corner lot is constrained by the lot width which results in a small building envelope. The lot is only 48 feet deep from west to east, with frontage on two right-of-ways. A 25-foot front yard setback is required along Kress Road to the east and a 30-foot rear yard setback is required to the west, meaning that the total required setback is 5 feet deeper than the physical dimensions of the lot. Development possibilities are constrained on this lot. The existing home is 15.9 feet setback from the front property line, where 25-foot front yard setback is required. The proposed additions would not impact the surrounding properties nor would the improvements likely create sight visibility problems given the fact that the dwelling would be more than 15 feet from the traveled roadway, plus an additional 15 feet back from the property boundary. The subject site is in the North Chain of Lakes planning area of the Master Plan. The proposed request would not adversely affect the proposed objectives of the Master Plan. There is a condition or situation of the subject site that is of so general or recurrent a nature that the proposed additions to the existing dwelling cannot comply with the required front yard setback standards. The short depth of this corner lot constrains development on this site for single family residential purposes. The use of the site is single-family residential and the proposed variance would not change the use. Given the small narrow size of the corner lot with a front yard setback from the east property line of Kress Rd. and a rear yard setback from the west side property line, there is a practical difficulty in constructing a compliant dwelling on the lot.

Chairperson Priebe opened the hearing to the public. There was no response. The call was closed.

Motion by Watson, supported by Neilson

Motion to approve variance application ZBA 19-0006 at 10450 Kress Rd. to allow for the construction of a 486 square foot addition on the north facade and a 282 square foot addition on the east facade of the existing dwelling. The resulting dwelling will have a 15.9-foot east front yard setback (25-foot front yard setback required, Section 7.6.1.fn4). The variance does meet variance standards one through seven of Section 6.5 of the Township Ordinance and a practical difficulty does exist on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at the meeting tonight and as presented in the staff report. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

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

Brittany Stein, Zoning Coordinator, reminded all the applicants that they have 6 months from any approval to obtain the Land Use permit or the variance will expire.

c. ZBA 2019-0007

Owner: Richard and Kristine Mancik

Location: 5229 Post Drive, Pinckney MI 48169

Parcel ID: 15-27-105-039

Request: Variance application to allow the demolition and reconstruction of a 1,053- square foot dwelling, with a walkout basement and partially constructed 729-square foot attached garage. The proposed dwelling would have a 7- foot, 3-inch north side yard setback (10-foot side yard setback required, Section 7.6.1.), and a 576-square foot elevated deck with a 6-foot, 6-inch north side yard setback (8-foot setback required, Section 8.17.1.).

Mr. Richard Mancik, applicant, stated that the footprint of the structure has not changed since the previous request. The reason he is back before the Board is that he exceeded the required 6 months. The Township does not have a process to obtain an extension.

The question was asked if there has been any changes to the lot next door. Mr. Mancik stated that he did sell that lot and they have paid for the transfer of the sewer. It is in the engineering stage.

Amy Steffens, Planning & Zoning Administrator, stated that on October 10, 2018, the Zoning Board of Appeals considered the applicant's request to allow for the demolition of the existing dwelling and the reconstruction, using the same footprint, of the 1,053- square foot dwelling. The dwelling would have a 7-foot, 3-inch north side yard setback, where a 10- foot side yard setback is required. Additionally, the proposed 576-square foot elevated deck would have a 6-foot, 6-inch north side yard setback, where an 8-foot setback is required. After opening the public hearing, taking testimony, and deliberating, the ZBA voted to approve the request. Section 6.8.(A) specifies that "No order of the Zoning Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than six months, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started." The applicant is ready to begin demolition and construction of the dwelling but must have the variance re-heard by the ZBA in order to move forward.

Steffens stated that she has provided the reissued staff report from the October 1, 2018 ZBA hearing. Staff continues to recommend denial of the variance request for the reasons stated in that staff report.. Additionally, she would like to point out a few items for clarification of some of the statements made at the last hearing. Property rights are not advanced based on a single proposed site plan or single architectural design. The building could be relocated to a compliant location. And the deck could be reduced in size to meet the ordinance. An elevated deck does not preserve a substantial property right nor does creating a non-conforming structure where one does not currently exist. At the October 10<sup>th</sup> hearing, a comment was made that it would be an expense for the applicant to have to move the existing basement. Finding #2 is very clear that you should not consider financial return to the applicant as a reason to grant a variance. She further stated that at that hearing, the board indicated that since the applicant owned the vacant property to the north, that no adverse impact would be seen from the reduced side yard setback. As Mr. Mancik has indicated, that lot was sold. Staff respectfully requests that the Board reconsider findings #2 & #3 in their deliberations.

Member Auxier stated that one of the things that he remembers discussing at the last hearing was the preservation of the stone stairs. It was discussed at that time that the stairs were worth preservation. Member Bohn agreed.

Chairperson Priebe opened the hearing to the public. There was no response. The call was closed.

Chairperson Priebe stated that this is a very steep lot and a difficult lot to build on. Further, she had been concerned about access, however she did visit the site and can see that is no longer an issue.

Member Auxier discussed the tapering down of the setback. He stated that it is an insignificant line in his mind. They did talk about decreasing the deck.

Member Watson discussed the topography of the property.

Motion by Auxier, supported by Watson

To approve variance application ZBA 18-0010 at 5229 Post Drive to allow the demolition and reconstruction of a 1,053-square foot dwelling, with a walkout basement and partially constructed 729-square foot attached garage. The proposed dwelling would have a 7-foot, 3-inch north side yard setback (10-foot side yard setback required, Section 7.6.1.), and a 576-square foot elevated deck with a 6-foot, 6-inch north side yard setback (8-foot setback required, Section 8.17.1.). The variance does meet variance standards one through seven of Section 6.5 of the Township Ordinance and a practical difficulty does exist on the subject site 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

Mr. Mancik stated that he was under the impression that this was a formality and was not expecting the Zoning Department's position. There should have been some kind of extension.

d. ZBA 2019-0008

Owner: Gary Phillips & Marilyn Kellepourey

Location: 5308 Gallagher Blvd., Whitmore Lake, MI 48189

Parcel ID: 15-27-301-089

Request: Variance application to allow for the demolition of an existing dwelling and construction of a new 2,284 square foot single family dwelling with an attached 1,012 square foot two-car garage. The dwelling will have a 24.6-foot setback from a regulated wetland (50-foot setback from a regulated wetland required, Section 9.9.3.B.).

Mr. Phillips, applicant, stated that they started the process approximately three years ago. In looking at their home and discovering various difficulties, they decided to put on an addition, however it did not meet the requirements. They found that the current home does not meet the setback from the wetlands. They also found that the foundation of the home is going bad and multiple other things that would cause the remodeling project to escalate. They then looked at demolishing the existing home and putting up a new home. With a new home they could meet the setbacks where the existing home violates three of the setbacks as well as the setback from the wetlands. The existing home is currently 26 feet back and the new home they are proposing a setback of 24 feet from the wetlands. Further the current deck is actually 2 feet over the property line. And the current homes is 9 feet 2 inches from the property line where 10 is required, which will also be corrected.

Brittany Stein, Zoning Coordinator, stated that the subject site is a 10,450 square foot parcel that fronts onto Gallagher Boulevard to the east, wetlands to the south, and single-family dwellings are located to the north, east and west of the site. The site currently is developed with a two-story single family dwelling. If approved, the variance request would allow for the demolition of the existing dwelling and construction of a new 2,284 square foot single family dwelling with an attached 1,012 square foot two-car garage. The dwelling will have a 24.6-foot setback from a regulated wetland where 50-feet is required. She discussed the orientation of the existing home on the lot and then the proposed dwelling. She stated that the proposed dwelling will meet all of the property line setbacks. The 50-foot regulated wetlands setback requirement applies generally to all properties in Hamburg Township. This parcel is unique as it is a small parcel with an existing home that is not ordinated on the lot parallel to the lot lines and has a large wetland area to the south. Because of the proximity of the wetlands and the 50-foot wetlands setback requirement, there is no compliant buildable area for the home on the lot. The requested

variance would permit the demolition of an existing dwelling and construction of a new single family dwelling within the required 50-foot wetlands setback. The site could not accommodate a compliant location for a home due to the wetlands. The requested variance will not be materially injurious to the property or the zone or district because there will be a wetlands setback sufficient for minimal impact to the wetlands. If the proposed development was more intense than a single family residential dwelling, the impact to the wetlands could potentially be greater. The subject site is in the South Hamburg/Strawberry planning area of the Master Plan. This area of the Township contains areas of farmland, large wetland areas and residential areas. The proposed request would not adversely affect the purpose or objectives of the Master Plan. The wetlands setback applies to all properties in Hamburg Township and is intended to preserve the natural, beneficial functions of wetlands such as flood protection, wildlife habitat, and improved water quality. The subject site is a small platted lot, constrained by wetlands which greatly impedes development on this lot. The use of the site is zoned for single-family residential and the requested variance would not change the use. Given the small size of buildable area on the lot with the wetlands setback restriction on the lot, there is a practical difficulty in constructing a compliant dwelling. She further stated that she included in the Board's packet an email from Jeff Pierce of the DEQ indicating that there is no impact to the wetlands, therefore he has no concerns.

Chairperson Priebe opened the hearing to the public. There was no response. The call was closed.

Chairperson Priebe stated that this is a difficult site as the home is built into the side of the hill and there are wetlands.

Motion by Auxier, supported by Bohn

To approve variance application ZBA 19-0008 at 5308 Gallagher Blvd. (TID 15-27-301-089) to allow for the demolition of an existing dwelling and construction of a new 2,284 square foot single family dwelling with an attached 1,012 square foot two-car garage. The dwelling will have a 24.6- foot setback from a regulated wetland (50-foot setback from a regulated wetland required, Section 9.9.3.B.). The variance does meet variance standards one through seven of Section 6.5 of the Township Ordinance and a practical difficulty does exist on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at the meeting tonight 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

Brittany Stein, Zoning Coordinator, stated that if the house is on the neighbor's lot, the applicant will need a temporary construction easement to allow them to demolish that portion on their lot. We will need that before the Land Use Permit can be issued.

e. ZBA 2019-0009

Agent: Angelini & Associates Architects

Owner: Stephen and Catherine Boston Living Trust

Location: 9658 Zukey Dr., Pinckney, MI 48169

Parcel ID: 15-22-301-001

Request: Variance application to allow for the removal of 100 percent, or 29 linear feet, of a dwelling's non-conforming perimeter exterior walls and reconstruction of the walls in the existing footprint (no more than 50 percent of the exterior perimeter walls of the nonconforming structure shall be removed, Section 11.3.3.). The proposed dwelling will have a 43-foot setback from the ordinary high water of Zukey Lake (50-foot setback from the ordinary high water required, Section 7.6.1.).

Theresa Angelini, Architect for the applicant presented a Power Point presentation. She presented pictures of the existing house and proposed site plan. She discussed the ordinary high water mark. She showed an aerial view of the homes along the same street showing their locations in relation to the ordinary high water mark. She discussed the existing setbacks. She stated that the existing square foot of the building is 1,589 square feet, and

they have reduced that to 1,546 square feet. The porch that formally wrapped around has been torn off improving the setback from the lake. She stated that when they appeared before the Board in April 2018, they were asking for a much larger project, which was denied. She discussed the difficulty in determining the ordinary high water mark. In May 2018, they met with the Zoning Department to discuss how to enlarge the house without a variance. After the porch was torn off, they found out some major flaws. They found out that there is no foundation under that part of the house, carpenter ant damage, bowed floor joists, balloon framing, etc. At that time, they were told that if they tore down more than 50%, then a variance would be required. In January 2019, they began the process to underpin the foundation and a lot of care was taken to keep the structure in place. She stated that the project was carefully planned and designed based on keeping 50% of the existing perimeter walls. There were extraordinary conditions that were hidden that were unique to the house. Also, this corner site in the subdivision is 22% of the minimum area required within the Waterfront Residential District and the width is 58% of the minimum required width of the district, which leads to problems with meeting all of the required setbacks. Other homes in the neighborhood were built 30-35 feet from the ordinary high watermark and have good views of Zukey Lake. Enforcing that 50 foot setback would be a hardship. The porch has been demolished which improves the condition to the west by 9.5 feet. If the house was required to be setback another 7 feet, it would be 17 feet further back than the house to the south impeding their view. The project does not extend any further than if they had been able to preserve 50% of the existing walls. It does not negatively affect the Master Plan. The deteriorating conditions were discovered after construction was well underway. The project was downsized and planned keeping the west wall of the house existing at 43 feet from the ordinary high water mark. This was the minimal acceptable to make the project viable. This variance will allow the project to be built within the same footprint approved by the building permit.

Member Auxier asked the size of the first proposal. Ms. Angelini stated that it was 500-600 square feet larger.

Discussion was held on the removal of the walls. Mr. John Binder, Contractor, stated that the studs went from the first floor all the way to the roof. As it was taken apart and leveled, when they got to the front, they ran into carpenter ants, rot etc. and there was nothing to build on. He further explained the construction. He stated that the walls did not come down, but repaired.

Ms. Angelini stated that they did receive four letters of support.

Amy Steffens, Planning & Zoning Administrator, stated that the subject site is a 9,627-square foot parcel that fronts onto Zukey Drive to the east; Zukey Lake is to the west, an unimproved platted right-of-way and single-family dwelling are to the north, and a single-family dwelling is to the south. The site is currently improved with a partially-demolished and reconstructed dwelling, that when completed will be a two-story, 3,135-square foot structure, as well as a 654-square foot detached garage. If approved, the variance request would allow for removal of 100 percent, or 29 linear feet, of a dwelling's non-conforming perimeter exterior walls and reconstruction of the walls in the existing footprint. Section 11.3.3 states that no more than 50 percent of the exterior perimeter walls of the nonconforming structure shall be removed. The proposed dwelling will have a 43-foot setback from the ordinary high water of Zukey Lake where a 50-foot setback from the ordinary high water is required. On April 11, 2018, the Zoning Board of Appeals considered a variance application to allow for the partial demolition of an existing dwelling and the reconstruction of a 3,877-square foot dwelling. At that time, the OHM was noted to be at 34.5-foot setback from the proposed. They were also requesting an 11-foot north front yard setback from the platted right-of-way of Petty's Drive. After opening the public hearing, taking testimony, and deliberating, the ZBA voted to deny the applicant's variance request. On May 25, 2018, staff met with the applicant and the architects to review a revised site plan that would comply with the zoning ordinance. At that time, staff discussed Section 11.3.3. of the nonconforming ordinance and advised the applicant of the requirements of keeping at least 50% of the perimeter of the nonconforming walls. On October 22, 2018, a land use permit was issued for a partial demolition of and rebuilding of a two-story 3,135-square foot dwelling. Both the applicant's site plan and the land use permit clearly indicated that 50% of the existing structure was to remain on the west façade, and the land use permit stipulated that removal of more than 50% would require ZBA approval. On December 6, 2018, staff received an email from the architect indicating that there was no foundation under the western portion of the existing dwelling, which was the portion of the dwelling that needed to remain in order to remain in compliance

with Section 11.3.3. At that time, Staff advised the applicant what their options were. In December, they went out and it appeared that nothing further had been done. On February 5, 2019, we were notified by the Livingston County Building Department that a posthole inspection had been scheduled, and staff contacted the architect to confirm that the nonconforming walls of the existing structure had not been removed. The architect confirmed that the "walls were per the plan." On April 1, 2019, the zoning staff was advised that more than 50% of the nonconforming walls had been removed in violation of the zoning ordinance and the land use permit requirements. A stop work order was posted on the site. On April 5<sup>th</sup> she met with the architect and contractor and agreed to lift the stop work order on the new construction if the work on the nonconforming portion of the dwelling ceased and if the owner applied for a variance. The site was resurveyed to determine the OHM from the previous year resulting in a 43-foot setback from the OHM, rather than the 34.5-foot setback from the previous site plan. She reviewed the Standards of Review. A structure conforming to the setback from the ordinary high water mark of Zukey Lake could be constructed on the site. With the removal of the existing dwelling the opportunity exists to bring this site into compliance with the setback from Zukey Lake. This is one of the topics that was discussed at the April 2018 hearing. With the removal of the house, the setbacks could be complied with. At that time, the owner indicated that they were trying to avoid tearing down the entire structure to maintain the character of the home. Unfortunately the house was demolished and they were able to meet the setbacks except for this western part on the Zukey Lake side. The zoning ordinance's non-conforming section was amended in November 2017 to allow the expansion of a non-conforming structure's footprint only if the expansion complies with the zoning requirements. Both the Planning Commission and the Township Board approval recommendations show a deliberate attempt by the township to phase out nonconforming structures by requiring compliance with the setback requirements. The ordinance requirements for nonconforming structures were made clear to everyone throughout the process that this applies to all properties in the Township, not only those that have a structural deterioration. The ordinance does not allow an exception. 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. With the majority of the dwelling being demolished, staff finds no compelling reason to approve either the replacement of the nonconforming structure nor encroachment into the setback from the ordinary high water mark. The setback from the ordinary high water mark is intended to maintain and protect an open vista to the water from neighboring properties. Permitting a new structure to impede on the waterfront setback when there are alternative locations to construct additional living space is detrimental to the public welfare, particularly those properties that have been built with a complaint setback. 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. There is no condition or situation of the subject property, not the dwelling that is not of so general or recurrent a nature that the proposed dwelling cannot comply with the ordinary high-water mark setback standards. The site is a sizeable waterfront lot and there is adequate room in the east front yard to construct additional living space. Zoning text amendments have been recently adopted to address recurrent conditions of waterfront lots and of nonconforming structures. The subject site can accommodate a compliant structure. The use of the site is single-family residential and the proposed variance would not change the use. As previously stated, the lot could accommodate a compliant structure and the actions taken by the applicant created a self-created practical difficulty.

Auxier asked if the wall they were attempting to leave was both the first and second floor. Steffens stated that it was just the first floor. It was stated that once the second floor was removed, they knew that they did not meet the 50% requirement. Ms. Angelini stated that the balloon framing made it much more complicated. Further discussion was held on when they lost the 50%. Auxier stated that from the diagrams, it looks like they still have 50% because they still have the whole west wall of the first floor unless the second floor was more than 50%. Steffens stated that we want to phase out the non-conforming structures, which is why we have the ordinance. You can repair and maintain a non-conforming structure, but the Planning Commission and Township Board both said that when more than 50% comes down, we then envision that is the opportunity to come into compliance.

Member Bohn discussed the variance in the Ordinary High Water Mark. He stated that the applicant had the intent to do this, but what was discovered was a hidden condition. Although he understands that the inherent

conditions of the property does not include the dwelling, but there are certain assumptions when starting a project. They uncovered something that would not normally be uncovered in a normal review of an existing structure.

Chairperson Priebe stated that she appreciates all the hard work that they have done to try and stay within the 50% and their efforts improve that setback from the water.

Chairperson Priebe opened the hearing to the public. There was no response. The call was closed.

Mr. Steve Boston, property owner, stated that they deliberated whether to stay on Zukey Lake or not, but they made the decision because of the meeting between their architect and Amy Steffens to discuss building a house without any variances. To do that and get the most space, they would have to keep that 50%. They did everything to try to meet that. The original house sits further back than the rest along the lake even more with the removal of the porch. The design is on the original footprint. They are not asking anything more. All of the immediate neighbors are in support of this variance. They feel that this is a fair and reasonable request.

Member Auxier stated that there is a definite improvement with the removal of the porch, and after seeing the pictures, we can see their obvious intent to meet the 50%.

Motion by Auxier, supported by Bohn

To approve variance application ZBA 19-009 at 9658 Zukey Drive to allow for the removal of 100 percent, or 29 linear feet, of a dwelling's non-conforming perimeter exterior walls and reconstruction of the walls in the existing footprint (no more than 50 percent of the exterior perimeter walls of the nonconforming structure shall be removed, Section 11.3.3.). The proposed dwelling will have a 43-foot setback from the ordinary high water of Zukey Lake (50-foot setback from the ordinary high water required, Section 7.6.1.). The variance does meet variance standards one through seven of Section 6.5 of the Township Ordinance and a practical difficulty does exist on the subject site 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 April 10, 2019 minutes**

Motion by Neilson, supported by Watson

To approve the April 10, 2019 minutes as written

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

### **b) Withdrawal of ZBA 19-002**

Brittany Stein, Zoning Coordinator, stated that we have issued a land use permit. The applicant did move the dwelling forward. That request had been previously tabled.

Steffens stated that the zoning text amendment changing the ZBA approval from six months to twelve months will be going to the Planning Commission with our next batch of amendments. We will be having a public hearing in June. The time requirement is in bold on the application signed by the applicant. The applicants receive the staff report at the same time as the ZBA Members. Furthermore, Mr. Mancik is right, there is no type of administrative extension. There are numerous things that can delay people from beginning work. We tell all

applicants as they are approaching the deadline to come in and pull a permit for the work and put a shovel in the ground.

Member Bohn stated that it would be nice to address the OHM for the purposes of land use planning, not regulating the water. There are established OHMs on all the great lakes and any commercial navigatable waterways. Steffens stated that the position of the township has been that we do not want to require a survey in order to pull a permit. But, without a survey, they do not know where things are in relation to the OHM. Typically, they go out and look and try to make it as easy as possible. Further discussion was held on the problems associated with setting our own OHM as well as problems with using the platted line as well.

**9. Adjournment**

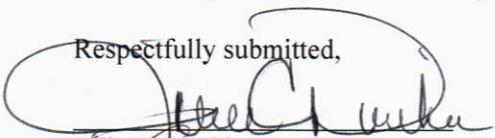
Motion by Auxier, supported by Neilson

To adjourn the meeting

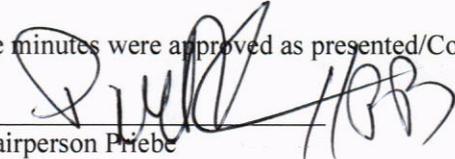
Voice vote: Ayes: 5    Nays: 0    Absent: 0    MOTION CARRIED

The meeting was adjourned at 8:55 p.m.

Respectfully submitted,

  
Julie C. Durkin  
Recording Secretary

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

  
Chairperson Priebe