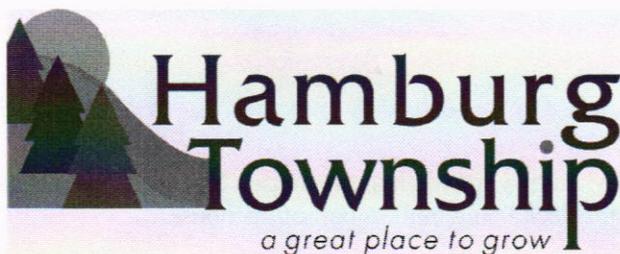


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**Treasurer:** Jason Negri  
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Jim Neilson

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**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:**

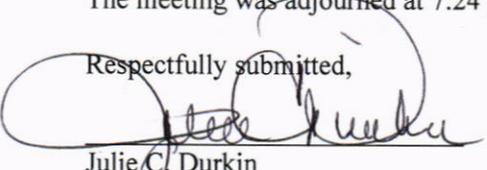
Motion by Neilson, supported by Diepenhorst

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: 10-9-19

  
Acting Chairperson Auxier