

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, March 13, 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 & Brittney 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:

ZBA 2019-002

Applicant: Stephen and Crystal Shuster

Location: Vacant on Kice Drive Pinckney MI 48169

Parcel ID: 15-07-300-071

Request: Variance request to construct a 3,578-square foot dwelling with a 1,139- square foot attached garage. The dwelling will have a 27-foot setback from a regulated wetland and the garage will have a 45-foot setback from a regulated wetland (50-foot setback from a regulated wetland required, Section 9.9.3.B.).

Mr. Stephen Shuster, applicant, stated that they purchased the property on a land contract approximately 2 years ago. They had the ASTI survey done to determine the wetlands. They hired Boss Engineering, and they are the ones that placed the footprint of the house on the knoll, which is the high area at the center of the lot. It is also the cleared area. There is a significant amount of trees along the road frontage that they would like to keep. The knoll also allows them to do the walk out. They are not looking to change the wetland outline at all. What is not

showing on the plan is the potential for a retaining wall to keep the fill from going into the wetland. At first it would be a temporary wall during construction then a permanent wall after construction. They do not want to touch the wetlands at all.

Brittney Stein, Zoning Coordinator, stated that the subject site is a four (4) acre parcel that fronts onto Kice Drive to the east, Putnam Township Rural Residential Zoning District is to the west, and single-family dwellings are located to the north, south, east and west of the site. The site is currently vacant, and there are wetlands on the north and the south sides of the property. A Wetland Delineation Report has been submitted to Hamburg Township. The Report indicates Wetland A (north pocket) is 0.60 acres in size, while Wetland B (south area) is 0.81 acres in size. Any wetlands which are greater than five acres in size are regulated by the Michigan Department of Environmental Quality (MDEQ). The wetland to the south is part of the Hay Creek wetlands. An email was sent to Jeff Pierce with the MDEQ, who confirmed there would not be a direct impact to the wetlands. Therefore, they would not need a DEQ permit.

Stein discussed the Standards of Review. She stated that the 50-foot regulated wetland setback requirement applies to all residential properties in the Township. This parcel is unique as it has two wetland areas. The location of the wetlands with the 50-foot setback requirement on this parcel creates a smaller buildable area, which limits the location where the house could be located. However, in looking at the plans, they did determine that there is a compliant location for the home on the lot that would not require any variance. Staff created a revised site plan by moving the same size home only 80 feet forward towards the front property line. Also, in reviewing the elevation plan, it was noted that they are proposing a barricaded sliding door. This indicates the possibility of a future elevated deck. The elevated deck is not proposed at this time. In the location proposed by the applicant, any future addition, deck, etc. would also require a variance to the 50-foot wetland setback. The requested variance would permit construction of a new single family dwelling on a vacant lot within the required 50-foot wetlands setback. The size and placement of a new home, especially on larger lots, is based on personal preference. The site could accommodate a compliant location for the home which would meet the Zoning Ordinance without the need of a variance. The requested variance may be materially injurious to the property or the zone or district as the proposed home is nearer the wetlands than the 50-foot requirement. It may affect storm water events in the future. The subject site is in the North Hamburg planning area of the Master Plan. This area of the Township is largely in a natural state and contains large areas of woodlands, wetland and wildlife habitat. Future development of any kind in areas surrounding wetlands could significantly impact wetland resources. Therefore, developers and community leaders should evaluate viable alternatives to avoid the impact. Moving the house forward may not be as detrimental. The wetlands also contribute significantly to the aesthetic character of the community. As the Master Plan states, wetlands are undevelopable, the open areas should remain natural. The proposed request would adversely affect the purpose 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 dwelling cannot comply with the 50-foot wetland setback requirement. The site could accommodate a compliant new dwelling unit. The wetlands setback applies to all properties in Hamburg Township. The use of the site is zoned for single-family residential and the requested variance would not change the use. The Applicant has created a practical difficulty where one does not exist. Moving the home's location would allow for the 50-foot wetland setback protection, the same size dwelling, future development without a variance, and no variance for the new home.

Member Bohn stated that the question regarding a future deck is a bit of concern. He further stated that with a 4.48 acre parcel, the intent is to have a natural look from all sides. If the home were to be moved forward, one of the impacts would be removal of some of those trees. The DEQ is taking a pass as far as any impacts on the State regulated wetlands. So, what we are talking about here is the buffer that we are imposing to maintain natural resources. He asked if there would be the ability in the future to split this parcel. If so, would the applicant agree to reasonable restrictions so that this would remain a single parcel.

Member Watson stated that he feels that with new construction, they should do everything they can to meet the ordinance without variance.

Member Auxier asked the relationship between the DEQ and the Township in terms of establishing setbacks from the wetlands. The DEQ has already said that this structure will not impact the wetlands, and they are the experts in the State when it comes to wetlands preservation. Stein stated that if the home was closer to the wetlands, they may have a concern. There is a difference between the DEQ's responsibility and the Township's responsibility. The Township is looking at it through a different lens.

Planning & Zoning Administrator Steffens determined that the property is not splittable.

Mr. Shuster stated that they would have to kill a significant number of trees in order to move the house forward, possibly dozens. He stated that there is a very large, old tree that would have to be removed. On their plan, they have laid out the driveway so as to not impact the root system of that tree. The .61 acre wetland to the north is a seasonal wetland. It is still a wetland, but during the summer months, it is just like walking through the woods. Mrs. Shuster stated that they did not realize that it was wetland when they purchased the property. It is regulated because it is within 500 feet of the Hay Creek wetlands.

Member Bohn asked that the future deck use be addressed. Mr. Shuster stated that this is a 3 year process for them. Mrs. Shuster presented a revised plan that would keep them further from the road, preserve the trees and have minimal impact on the setback. It was stated that with the new plan, the house is outside the 50 foot setback and allow them to build the deck at a future date. Mr. Shuster stated that they would need a variance to build the retaining wall. Mrs. Shuster stated they do not yet have an elevation plan. Further discussion was held on the location of the retaining wall. It was stated that if you had to do a retaining wall within the wetland setback, it would require a variance, but one with a lot less impact. Stein stated that a retaining wall does meet the definition of development and would need a variance depending on the location. Steffens stated that there is a provision within our ordinance that allows for an administrative review of any wetland development. She further stated that the intent of the ordinance is to protect the wetlands. If a retaining wall would provide protection of the wetlands, it would not be unreasonable to direct staff to work with the applicant and administratively review a retaining wall into the wetlands at the time the wall is required.

Chairperson Priebe opened the hearing.

James Nowacki, owner of the property to the south of the subject property, stated that he has talked to the Shusters. It looks like a beautiful house that they are planning. He stated that he has lived there approximately 20 years, and feels that what they are proposing is great. It is a tough property to build on because of the wetlands, but they have done their homework.

Chairperson Priebe stated that we received two letters. John and Amy Banfield are in support, and Herbert and Diane Park are opposed.

There being no further comment, Chairperson Priebe closed the public hearing.

Member Auxier reviewed the request. He stated that the applicant is proposing to change their plans for the home, which would not require a variance. However, we need to direct the staff to work with the applicant administratively to help preserve the wetlands through the use of a retaining wall.

Motion by Priebe, supported by Bohn

To table variance application ZBA 19-002 at vacant property on Kice Drive (TID 15-07-300- 071) to allow the applicant and staff to work together for a revised plan and relocation of the house to meet the setbacks and review the provisions of the ordinance to determine, if a retaining wall is needed, and if its placement meets the spirit of the ordinance, that it be approved administratively

Steffens stated that if the new site plan meets the 50 foot setback from the wetlands and there is not a problem with the retaining wall, then we can issue the land use permit without the need to come back to the ZBA. It would be in the best interest of the applicant to withdraw their application at that time.

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

ZBA 2019-003

Applicant: Joan Fitzgibbon

Location: 3574 Windwheel Pointe Pinckney MI 48169

Parcel ID: 15-32-102-040

Request: Variance request to construct a 336-square foot enclosed sunroom over an existing patio. The sunroom will have an 8-foot west rear yard setback (30-foot rear yard setback required, Section 7.6.1.).

Mr. Chris Childs of Tri-County Builder, representing the applicant, stated that the homeowners are excited to do a remodel to their existing porch. They did have a covered porch in place. He stated that as far as the percentages, the impact and the LOMA, they do meet those requirements. They did get a Floodplain Certificate completed. They are at 33.35% with the structures and 36% of the impervious surfaces. He presented photos of the covered porch which has been partially removed. As far as impact on surrounding properties, there should be no further impact. They have four letters from the impacted property owners all stating that they are okay with the request.

Amy Steffens, Planning & Zoning Administrator, stated that the subject site is an 8,146-square foot parcel improved with a 2,280-square foot dwelling, including the attached 616-square foot garage. The site fronts onto Windwheel Pointe to the east; Whitewood Lake is to the west, and single-family dwellings are to the north and south. If approved, the variance request would allow for the construction of a 336-square foot enclosed sunroom over an existing raised patio at the rear of the house. The sunroom would have an eight-foot west rear yard setback where a 30-foot rear yard setback would be required per Section 7.6.1. Whenever there is an issue within the floodplain, staff addresses this issue within its staff report. We have received a LOMA which removes the existing structure from FEMA's flood hazard area. We have sent that to the DEQ, and we are looking to see if they have authority over this floodplain area. They do not have authority over every floodplain, but we always want them to tell us yes or no. DEQ has asked for an elevation certificate to ensure that the LOMA was issued for the elevations as they are now and they are current grades so that we know that the house is out of the floodplain. She reviewed the seven findings of fact. The subject site is a typical waterfront lot located within a platted subdivision; the plat indicates the lot runs to the water's edge. The applicant believes that because the plat specifies that the lot runs to the water's edge, the rear yard setback from the property boundary would not apply. However, the ZBA and previous Zoning Administrators have used the platted line. If the Township would like to make the determination that we use the rear yard setback differently, staff simply needs that direction. But for the current project, we are using the platted lot line. If approved, the sunroom would encroach farther into the rear yard than surrounding properties. The ZBA can also take into consideration that the edge of water is approximately 20 feet from the rear lot line and could mitigate the impact of having a covered structure there. Property rights are not advanced based on a single proposed site plan or architectural design. The property is currently zoned, developed, and used for residential purposes, and complying with the required setbacks would not deny the property's continued residential and riparian uses. Given the way the site was developed, the site cannot accommodate any further development to the rear of the dwelling without the granting of a variance. However, there is room on the front for additional enclosed living space. The way the property was developed does not leave any room on the water side for a compliant structure. You can look at the 20 feet between the water and the property line as way to mitigate the impact of the enclosed space. The subject site is located in the North Chain of Lakes planning area of the Township's Master Plan, and the proposed project does not impact the Master Plan. This is a situation of the subject site that is not of a recurrent nature. A setback from the rear property boundary line applies to all development on every parcel in Hamburg Township. The platted lot line is used to determine only the setback line, not riparian rights or access or the land encompassed by property rights. You could also make the argument that there is not a condition like this parcel due to how the plat was originally noted. The property is currently used for single-family residential use, and the use will not change if the proposed variance request is granted. An enclosed sunroom that encroaches farther into the rear yard setback than the

adjacent properties is not the minimum necessary to permit reasonable use of the land. An unenclosed covered patio would be less impactful than an enclosed sunroom. However, the fact that the top of the water is about twenty feet from the property boundary could help mitigate any visual impact of the encroachment into the rear setback.

Discussion was held on where the ordinary high water mark is and the location of the permitted seawall. It was stated that it is 54 feet from the seawall to the back of the proposed sunroom.

Discussion was held on how the ordinary high water mark is determined. Steffens stated that the ordinance does allow us to look at the top of the water absent any other information.

Discussion was held on riparian rights. The question was asked who owns the property between the platted lot line and the ordinary high water mark. It was stated that there should be a conversation at a later date how staff would like to interpret that rear lot line. Discussion was held on some plats which designate that portion to be park. The proprietor did not intend for those lots to be waterfront where others did. It is not always clear on the plats, which is why the 30 foot setback has been used from the lot line. It was stated that this is something that the Township Board, Planning Commission and ZBA should review. Mr. Childs discussed how he was measuring from the permitted seawall and how he has determined setbacks in other situations on lake lots.

Member Auxier stated that his feeling is that if that portion between the platted lot and the water is not designated for some use, then we should be using the ordinary high water mark. And, we should be using it for this case. He discussed the two adjacent properties. Chairperson Priebe stated that we can take it into account, but as it is written, we need to use the property line.

Chairperson Priebe opened the hearing.

Nancy Cox of 3574 Windwheel Pointe stated when they started this project, they had no idea that they would be discussing variances and high water marks because there was an existing structure there. During the winter months, they could not use the roof and did not want to pull it off each year. That is what precipitated them wanting a three-season room. She thanked everyone for their time.

There being no further comment, Chairperson Priebe closed the public hearing.

Motion by Auxier, supported by Watson

Motion to approve variance application ZBA 19-003 at 3574 Windwheel Pointe to allow for the construction of a 336-square foot enclosed sunroom over an existing patio. The sunroom will have an 8-foot west rear yard setback (30-foot rear yard setback 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 February 13, 2019 minutes

Motion by Auxier, supported by Neilson

To approve the February 13, 2019 minutes as written

Voice vote: Ayes: 4 Nays: 0 Absent: 0 Abstain: 1 MOTION CARRIED

Steffens stated that we will be having an April meeting.

9. Adjournment

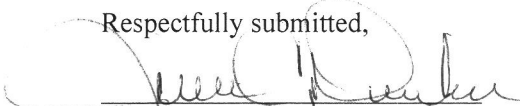
Motion by Watson, supported by Bohn

To adjourn the meeting

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

The meeting was adjourned at 8:11 p.m.

Respectfully submitted,

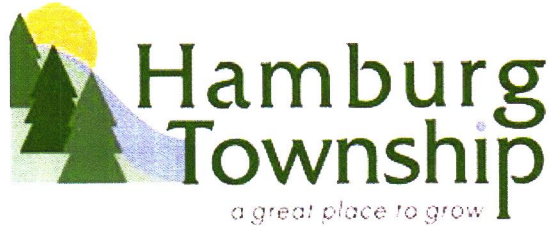


Julie C. Durkin
Recording Secretary

The minutes were approved as presented/Corrected: 4-10-19



Chairperson Pribe



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

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

ZONING BOARD OF APPEALS MEMORIALIZATION OF FINDINGS

March 13, 2019

Approval of Variance 19-003

PROJECT SITE: 3574 Windwheel Pointe
TID 15-32-102-040

APPLICANT/OWNER: Joan Fitzgibbon

PART I – PROJECT DESCRIPTION

Variance request to construct a 336-square foot enclosed sunroom over an existing patio. The sunroom will have an 8-foot west rear yard setback (30-foot rear yard setback required, Section 7.6.1.).

PART II– FINDINGS FOR APPROVAL

The Zoning Board of Appeals approves the project described above because the Board finds that the project complies with the applicable standards of the township ordinance including the applicable variance standards as follows:

Variance Standards

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

If approved, the sunroom would encroach farther into the rear yard than surrounding properties. The edge of water is approximately 20 feet from the rear lot line and could be considered an exceptional or extraordinary circumstance of the subject site that would mitigate the visual impact of the encroachment into the rear yard of the proposed sunroom.

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.**

Given the way the site was developed, the site cannot accommodate any further development to the rear of the dwelling without the granting of 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.**

See analysis under standards one and two.

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 located in the North Chain of Lakes planning area of the township's Master Plan. This planning area is closely tied to lake waterfronts and envisions continued waterfront residential designation to minimize development pressure on the waterfronts.

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.**

A setback from the rear property boundary line applies to all development on every parcel in Hamburg Township. The platted lot line is used to determine only the setback line, not riparian rights or access or the land encompassed by property rights.

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 property is currently used for single-family residential use and the use will not change if the proposed variance request is granted.

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

The fact that the top of the water is about twenty feet from the property boundary could help mitigate any visual impact of the encroachment into the rear setback.

Approved by the Hamburg Township Zoning Board of Appeal at a regular meeting on March 13, 2019 by the following vote:

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