
**Hamburg Township
Zoning Board of Appeals
Wednesday, June 10, 2020
Electronic Meeting, pursuant to Executive Order 2020-75**

Please join this meeting from your computer, tablet or smartphone.

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United States: [+1 \(571\) 317-3122](tel:+15713173122)

Access Code: 424-175-645

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**

a) ZBA 20-0003

Owner: Leonard and Melissa Morgan

Location: 2946 Indian Trail Dr.
Pinckney, MI 48169

Parcel ID: 15-32-402-015

Request: Variance application to allow for the construction of a 2,594-square foot two-story dwelling. The dwelling would have a 1.1-foot north front yard setback (25-foot front yard setback required, Section 7.6.1.); a 5.2-foot east side yard setback, resulting in an aggregate side yard setback of 10.3 feet (15-foot aggregate side yard setback required, Section 7.6.1. fn. 4); and a 41.1-foot south rear setback from the ordinary high water mark of Base Line Lake (50-foot setback from the OHM required, Section 7.6.1. fn. 3). A 134-square foot balcony would have a 41.1-foot setback from the OHM (44-foot setback from the OHM required, Section 8.18.2). Total lot coverage would be 52 percent, (maximum 50 percent lot coverage allowed, Section 7.6.1. fn. 7).

b) ZBA 20-0005

Owner: Dennis J. Pennington

Location: 5313 Gallagher Blvd.
Whitmore Lake, MI 48189

Parcel ID: 15-27-301-201

Request: Variance application to permit the construction of a 12-foot by 15-foot detached accessory structure. The accessory structure will have an eight-foot setback from the boundary or edge of a regulated wetland (50-foot setback from the boundary or edge of any regulated wetland required, Section 9.9.3.B.1).

8. New/Old business

a) Approval of May 13, 2020 ZBA Regular Meeting Minutes

b) Memo of Findings for ZBA 20-0002

c) Memo of Findings for ZBA 20-0004

9. Adjournment



Zoning Board of Appeals Staff Report

AGENDA ITEM: 7a



TO: Zoning Board of Appeals
(ZBA)

FROM: Amy Steffens, AICP

HEARING DATE: June 10, 2020

SUBJECT: ZBA 20-0003

PROJECT SITE: 2946 Indian Trail Dr.
TID 15-32-402-015

**APPLICANT/
OWNER:** Leonard and Melissa
Morgan

PROJECT: Variance application to allow for the construction of a 2,594-square foot two-story dwelling. The dwelling would have a 1.1-foot north front yard setback (25-foot front yard setback required, Section 7.6.1.); a 5.2-foot east side yard setback, resulting in an aggregate side yard setback of 10.3 feet (15-foot aggregate side yard setback required, Section 7.6.1. fn. 4); and a 41.1-foot south rear setback from the ordinary high water mark of Base Line Lake (50-foot setback from the OHM required, Section 7.6.1. fn. 3). A 134-square foot balcony would have a 41.1-foot setback from the OHM (44-foot setback from the OHM required, Section 8.18.2). Total lot coverage would be 52 percent, (maximum 50 percent lot coverage allowed, Section 7.6.1. fn. 7).

ZONING: WFR (waterfront residential district)

Addendum for June 10, 2020 hearing

On March 11, 2020, the ZBA considered the following request: variance application to allow for the construction of a two-story, 1,272 square foot dwelling with a 1,269 square foot second story. The dwelling will have a 21.7-foot north front yard setback (25-foot front yard setback required, Section 7.6.1.), and a 2.9-foot east side yard setback, resulting in an aggregate side yard setback of 7.9 feet (15-foot aggregate side yard setback required, Section 7.6.1. fn. 4),

and a 44-foot south rear yard setback from the ordinary high water mark of Base Line Lake (50-foot setback from the OHM required, Section 7.6.1. fn. 3), and a total lot coverage of 56 percent, (maximum 50 percent lot coverage allowed, Section 7.6.1. fn. 7).

After the public hearing, the ZBA tabled the request to allow the applicant time to revise the plans to reduce the side yard setback and lot coverage requests. On May 5, 2020 revised plans were submitted and the amended proposed setbacks are noted below.

	Existing	Proposed	Required
Dwelling: South rear (high water mark)	40.4 feet	41.1 feet	50 feet
Balcony: South rear (high water mark)	--	41.1 feet	44 feet
North (front/road side)	27.7 feet	1 foot	25 feet
West (side)	5.1 feet	5.1 feet	5 feet (15-foot
East (side) (Variance)	2.8 feet	5.2 feet	10 feet aggregate)
Lot Coverage (Variance)	Buildings: 41% All Impervious Surfaces: 60%	Buildings: 41% All Impervious Surfaces: 52%	Buildings: 35% All Impervious Surfaces: 40% (OR up to 50% with Eng. Grading plan)

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 existing garage was granted variance approval in 2015 to have a 0.7-foot front yard setback; the garage was proposed to have a 12/12 pitch roof, a 240-square foot unfinished storage attic space, and no windows facing the road. The current proposal is for a second story to be built over the garage with a 1.1-foot front yard setback, with a dormer and two windows facing the road. Accessory structures and living space have difference setback requirements because of the way these spaces are used and the privacy concerns surrounding the use. A typical garage is used for parking and storage and is a more acceptable use within the setback, as evidenced by the township’s adoption of reduced front setbacks for accessory structures. Conversely, living space setbacks help define the character of the neighborhood, define the scale of residential streets, and provide privacy between living spaces on adjacent and adjoining residential lots. A second story with a 1-foot setback from a property boundary, where one does not now exist, is not due to an exceptional or extraordinary circumstance applicable to the property involved that does not apply generally to other properties in the same district or zone. The lot is relatively small in size but staff has demonstrated that a compliant dwelling can be constructed on this lot. Personal preference drives the need for the variance for a second story living space at 1 foot from the property boundary, not a condition of the property.

This subject site is a 4,164 square foot lot that abuts Base Line Lake to the south, requiring a 50-foot setback from the Ordinary High Water Mark (OHM) whereas the proposed house will have a 41.1-foot from the OHM. The balcony would have also have a 41.1-foot setback from the OHM

where a 44-foot setback would be required; the existing house does not have a balcony. The existing and proposed dwelling and the balcony would comply with the required 30-foot setback from the rear property boundary. The setback from the OHM applies to all properties in the district and throughout the township and is not a condition exceptional to the subject site when a compliant dwelling could be constructed.

Because the lot is less than 60 feet wide in WFR zoning district the lot has reduced side yard setbacks of an aggregate of 15 feet. The current single-story dwelling has an aggregate side yard setback of 7.9 feet; proposed is a two-story dwelling that increases the bulk of the non-conforming side yard setback. The proposed dwelling would be constructed with the existing 5.1-foot west side yard setback and a 5.2-foot east side yard setback for an aggregate side yard setback of 10.3 feet. Only 7.7 linear feet of a covered porch in the north east corner of the dwelling would have a 5.2-foot east side yard setback; other than the 42 square feet of the covered porch the remainder of the dwelling would have a 12.2-foot aggregate side yard setback. The platted walkway to the east does provide an additional buffer, however, to the dwelling immediately to the east and a deviation to the east property boundary could be a reasonable deviation from the ordinance.

Finally, the application submitted for the 2015 variance request indicated that with the addition of the garage total lot coverage would be 37.7 percent and total impervious surface coverage would be 41.9 percent. However, the application submitted with the current variance request indicates that the existing total impervious surface coverage is 60 percent which was not granted variance approval. The ordinance allows up to 50 percent lot coverage with the submittal of an engineered grading and drainage plan. The proposed project would provide 52 percent total impervious surface coverage. Impervious coverage could be reduced by reducing the amount of patio pavers on the lot or using engineered pervious pavers. Any lot coverage over 50 percent, even if granted a variance, would require an engineered grading and drainage plan to be submitted.

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.

There are 16 existing homes within 300 feet of the subject site. The average size of the homes within 300 feet of the subject lot is approximately 2,000 square feet, and the proposed dwelling would be 2,541 square feet, attached to the existing 504 square foot garage.

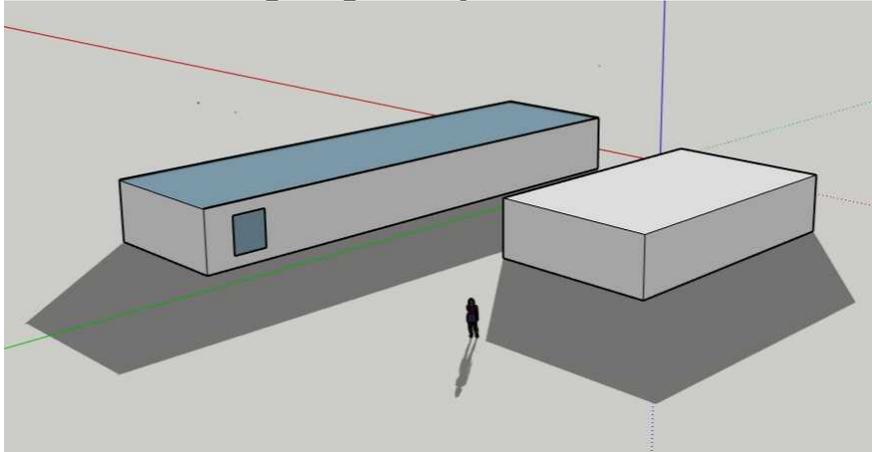
A substantial property right is not preserved based on granting a variance for a particular architectural design. The proposed dwelling, in the same footprint as the existing home, is a personal preference of the property owners. The home could be redesigned and reconfigured to meet the required setbacks. Based on the request to rebuild a single family dwelling, there is a

compliant location on the property for a new two story single family dwelling with a 960 square foot footprint (24 feet by 40 feet)

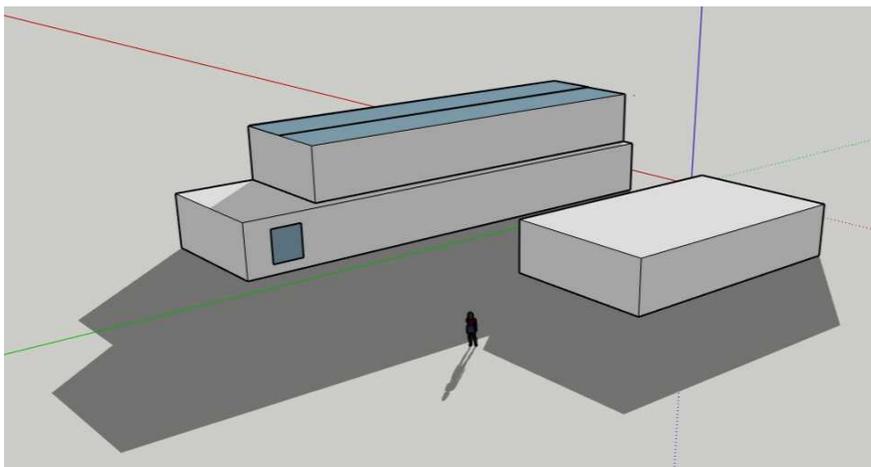
3. That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.

The demolition of a single-story dwelling and construction of a new two-story single-family dwelling with a larger footprint with deficient setbacks would have an increased impact to surrounding properties. The ordinance requirement for these required setbacks is intended to provide adequate space, open vistas, and privacy throughout neighborhoods and between structures on smaller residential lots. It is encouraged to construct a more compliant dwelling on the lot to decrease the impact on surrounding properties.

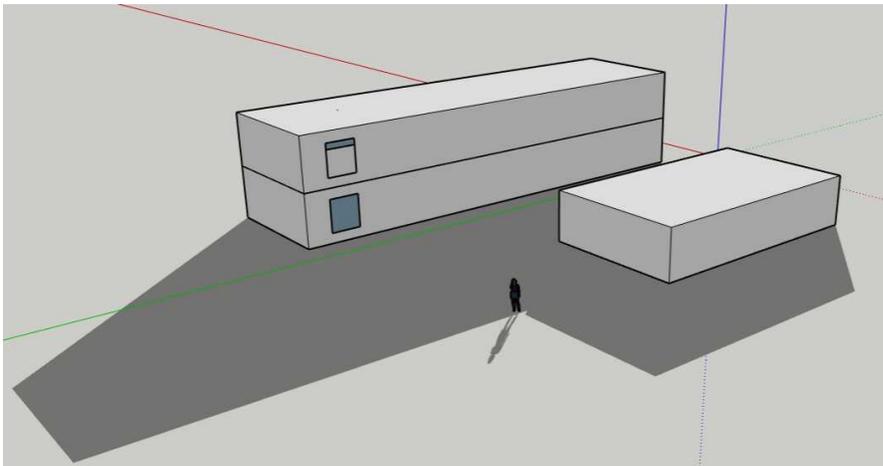
Picture 1: Existing Single Story:



Picture 2: Second Story Addition that meets the setback requirement



Picture 3: Second Story Addition that is setback the same distance as the existing structure:



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

The subject site is in the North Chain of Lakes planning area of the Master Plan. This area envisions waterfront and natural river district zoning closely tied to the lakes and Huron River. The proposed request would not adversely affect the purpose or objectives of the Master Plan.

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

The subject site is a residentially zoned, developed, and used property. While the site is 4,164 square feet a compliant buildable area is available. The proposed location of the new home is a personal preference and is not a condition specific to the subject site.

There is no condition or situation that is so general or recurrent a nature as to warrant approval of the proposed variance request. A home of a smaller size could comply with the required front and side yard setback standards and ordinary high water mark setback standards. The lot coverage could also be reduced by decreasing the size of the patio and other sidewalks on the property.

6. Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district.

The use of the site is single-family residential and the proposed variance would not change the use.

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

The home could be redesigned and reconfigured to meet the required setbacks. Based on the request to rebuild a single family dwelling, there is a compliant location on the property for a new two story single family dwelling with a 960 square foot footprint (24 feet by 40 feet).

“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 an approval to the requested variance considering a thorough review and discussion among ZBA members of the surrounding impacts and any other potential options for the homeowner to redesign an addition of additional living space to the existing home.

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.

Denial Motion:

Motion to deny variance application ZBA 20-003 at 2946 Indian Trail Dr. to allow for the construction of a two-story dwelling with a 1.1-foot north front yard setback (25-foot front yard setback required, Section 7.6.1.); a 41.1-foot south rear setback from the ordinary high water mark of Base Line Lake (50-foot setback from the OHM required, Section 7.6.1. fn. 3). A 134-square foot balcony would have a 41.1-foot setback from the OHM (44-foot setback from the OHM required, Section 8.18.2). Total lot coverage would be 52 percent, (maximum 50 percent lot coverage allowed, Section 7.6.1. fn. 7).

The variance does not meet variance standards one, two, 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.

Approval Motion:

Motion to approve variance application ZBA 20-003 at 2946 Indian Trail Dr. to allow for the construction of a two-story dwelling with a 5.2-foot east side yard setback, resulting in an aggregate side yard setback of 10.3 feet (15-foot aggregate side yard setback required, Section 7.6.1. fn. 4);

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.

Exhibits for the June 10, 2020 hearing

- A: revised plans submitted May 5, 2020 (large sized prints not in digital packet)
- B: application materials and site plan for March 11, 2020 ZBA hearing
- C: 2015 approved garage elevations
- D: 2015 ZBA meeting minutes
- E: DPW utilities review
- F: Staff suggested site plan
- G: March 11, 2020 ZBA minutes

Addendum for May 13, 2020 hearing

On May 5, 2020, the applicant’s agent submitted plans that require additional legal notice before the request can be docketed for a public hearing. Therefore, this request will be scheduled for the next available hearing.

Staff report for March 11, 2020

Project Description

The subject site is a 4,300-square foot lot that fronts onto Indian Trail Drive to the north, Base Line Lake to the south, and single family dwellings are located to the north, east, and west of the site. The existing dwelling is one-story 1,550 square foot, with a detached 504 square foot garage.

If approved, the variance request would permit the construction of a two-story, 1,272 square foot dwelling with a 1,269 square foot second story. The dwelling will have a 21.7-foot north front yard setback (25-foot front yard setback required, Section 7.6.1.), a 2.9-foot east side yard setback, resulting in an aggregate side yard setback of 7.9 feet (15-foot aggregate side yard setback required, Section 7.6.1. fn. 4), and a 44-foot south rear yard setback from the ordinary high water mark of Base Line Lake (50-foot setback from the OHM required, Section 7.6.1. fn. 3), Lot coverage, will be 56 percent, (Maximum 50 percent lot coverage allowed, Section 7.6.1. fn. 7).

The dwelling’s existing and proposed setbacks are noted in the table below.

	Existing	Proposed	Required
South (high water mark) (Variance)	44 feet	44 feet	50 feet
North (front/road side) (Variance)	27.7 feet	21.7 feet	25 feet
West (side)	5 feet	5 feet	5 feet
East (side) (Variance)	2.9 feet	2.9 feet	10 feet
			(15 ft. aggregate)
Lot Coverage (Variance)	Buildings: 41% All Impervious Surfaces: 60%	Buildings: 43% All Impervious Surfaces: 56%	Buildings: 35% All Impervious Surfaces: 40% (OR up to 50% with Eng. Grading plan)

Based on FEMA’s Flood Insurance Rate Map (FIRM), a portion of the site lies within the 100-year floodplain. Any development of this site would require an elevation certificate. 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. If the location of the proposed addition and location of the existing dwelling is found to be in the floodplain, the top of the bottom floor must be at least one-foot above the base flood elevation. An Elevation Certificate must be provided prior to issuing a land use permit.

The image below indicates the “AE” (100-year) Flood Zone of Base Line Lake.



History and Information about the property

This subject site is a 4,300 square foot lot that is approximately 39 feet wide at the street (north) and 45 feet wide at the lake (south). There is a 10-foot wide platted walkway to the east of this site, which is a designated walkway to provide access to the lake for the property owners within the Glenwood on the Lakes subdivision. There is a 25-foot wide platted unimproved right of way for Indian Trail Dr. in front of the lot (platted in 1922). Additionally, there is a platted 60-foot wide right of way also for Indian Trail Dr. part of the Tamarina Subdivision Plat of 1961, which is north of the Glenwood on the Lakes plat. The property abuts the water, requiring a 50-foot setback from the Ordinary High Water Mark of Base Line Lake.

A variance request for the garage was approved in May 2015 to have a 0.7-foot front yard setback, where a 15-foot setback would be required. The garage is now existing (24 feet wide by 21 feet deep) and the proposal is to attach the new home to the garage. This variance request was approved based on these reasons: the small size of the lot, the location of the existing home, the location of the traveled roadway, and the walkway to the east.

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.

8. 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.

This subject site is a 4,300 square foot lot that abuts the water, requiring a 50-foot setback from the Ordinary High Water Mark of Base Line Lake, where the proposed house will be 44 feet from the water. Additionally, all WFR zoned properties require the primary structure to have a 25-foot front yard setback. Both setback requirements are intended to provide adequate space, open vistas, and privacy throughout neighborhoods and between structures on smaller residential lots. The required front yard setback is 25 feet, the current house is setback 27.7 feet. The proposed house would be setback from the front property line at 21.7 feet and attached to the garage.

Because the lot is less than 60 feet wide in WFR zoning district the lot has reduced side yard setbacks of an aggregate of 15 feet. The current single story house has an aggregate side yard setback of 7.9 feet, however proposed is a two-story house that increases the footprint of the non-conforming side yard setback. The proposed new house would be constructed at the same side yard setbacks as the existing house, at 5 feet from the west side property line and 2.9 feet to the east side property line, leaving an aggregate side yard of 7.9 feet.

There is no exceptional or extraordinary circumstance of condition applicable to the property involved that does not apply to other properties in the same district or zone.

9. 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.

There are 16 existing homes within 300 feet of the subject site. The average size of the homes within 300 feet of the subject lot is approximately 2,000 square feet, and the proposed dwelling would be 1,272 square feet, attached to the existing 504 square foot garage.

A substantial property right is not preserved based on granting a variance for a particular architectural design. The proposed dwelling, in the same footprint as the existing home, is a personal preference of the property owners. The home could be redesigned and reconfigured to meet the required setbacks. Based on the request to rebuild a single family dwelling, there is a compliant location on the property for a new two story single family dwelling with a 960 square foot footprint (24 feet by 40 feet) (Exhibit D).

10. 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 existing home is setback an aggregate of 7.9 feet to the side property lines, and currently 44 feet from the Ordinary High Water Mark. The proposed house would also have these same setbacks. The existing house is 27.7 feet setback from the front lot line, and the proposed

house would be 21.7 feet to the front lot line, where 25 feet is required; therefore increasing the non-conformity on the lot. The demolition of a single-story dwelling and construction of a new two-story single family dwelling with a larger footprint at the same side yard setbacks would have an increased impact to surrounding properties. The ordinance requirement for these required setbacks is intended to provide adequate space, open vistas, and privacy throughout neighborhoods and between structures on smaller residential lots. It is encouraged to construct a more compliant dwelling on the lot to decrease the impact on surrounding properties.

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

The subject site is in the North Chain of Lakes planning area of the Master Plan. This area envisions waterfront and natural river district zoning closely tied to the lakes and Huron River. The proposed request would not adversely affect the purpose or objectives of the Master Plan.

12. 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.

The subject site is a residentially zoned, developed, and used property. The site is 4,300 square feet, with a compliant buildable area on the property for a single family dwelling. The proposed location of the new home is a personal preference and is not a condition specific to the subject site.

There is no condition or situation that is so general or recurrent a nature as to warrant approval of the proposed variance request. A home a smaller size could comply with the required front and side yard setback standards and ordinary high water mark setback standards. The lot coverage could also be reduced by decreasing the size of the patio and other sidewalks on the property.

13. Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district.

The use of the site is single-family residential and the proposed variance would not change the use.

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

The home could be redesigned and reconfigured to meet the required setbacks. Based on the request to rebuild a single family dwelling, there is a compliant location on the property for a new two story single family dwelling with a 960 square foot footprint (24 feet by 40 feet).

“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 an approval to the requested variance considering a thorough review and discussion among ZBA members of the surrounding impacts and any other potential options for the homeowner to redesign an addition of additional living space to the existing home.

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.

Denial Motion:

Motion to deny variance application ZBA 20-003 at 2946 Indian Trail Dr. to allow for the construction of a two-story dwelling. The dwelling will have a 21.7-foot north front yard setback (25-foot front yard setback required, Section 7.6.1.), a 5.2-foot east side yard setback, resulting in an aggregate side yard setback of 10.3 feet (15-foot aggregate side yard setback required, Section 7.6.1. fn. 4), and a 41.1-foot south setback from the ordinary high water mark of Base Line Lake (50-foot setback from the OHM required, Section 7.6.1. fn. 3). An elevated deck will have a 41.1-foot setback from the OHM (44-foot setback required, Section 7.6.1. fn3.) The proposed lot coverage would be 56 percent, (maximum 50 percent lot coverage allowed, Section 7.6.1. fn. 7).

The variance does not meet variance standards one, two, 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.

Approval Motion:

Motion to approve variance application ZBA 20-003 at 2946 Indian Trail Dr. to allow for the construction of a two-story dwelling. The dwelling will have a 21.7-foot north front yard setback (25-foot front yard setback required, Section 7.6.1.), a 5.2-foot east side yard setback, resulting in an aggregate side yard setback of 10.3 feet (15-foot aggregate side yard setback required, Section 7.6.1. fn. 4), and a 41.1-foot south setback from the ordinary high water mark of Base Line Lake (50-foot setback from the OHM required, Section 7.6.1. fn. 3). An elevated deck will have a 41.1-foot setback from the OHM (44-foot setback required, Section 7.6.1. fn3.) The proposed lot coverage would be 56 percent, (maximum 50 percent lot coverage allowed, Section 7.6.1. fn. 7).

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.

Exhibits

Exhibit A: Application Materials

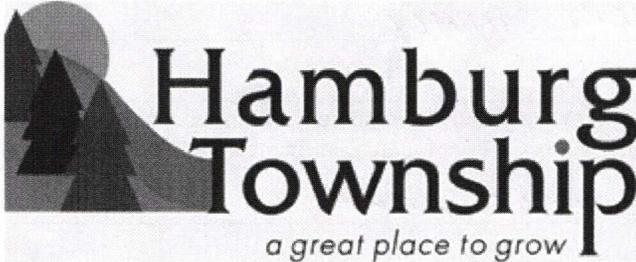
Exhibit B: Site plan

Exhibit C: Construction Plans (Hard copy only - plans too large to include in digital packet)
Exhibit D: Staff drawn revised site plan

ZBA Case Number 20-003

March 11 @ 7pm

\$ 650
(4 Variances)



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: 2-6-2020
2. Tax ID #: 15- 31 -402 -015 Subdivision: GLENWOOD ON THE LAKES Lot No.: 17
3. Address of Subject Property: 2946 INDIAN TRAIL HAMBURG TWP
4. Property Owner: MELISSA MORGAN Phone: (H) (248) 240-7455
 Email Address: 1231melmorgan@gmail.com (W) _____
 Street: 9670 MARSHALL RD City SOUTH LYON State MI
48178
5. Appellant (If different than owner): BRUCE DONOVAN CONST Phone: (H) _____
 E-mail Address: bruce@brucedonovanconstruction.com 734-320-1190
 Street: P.O. Box 308 City HAMBURG State MI
6. Year Property was Acquired: _____ Zoning District: WFR Flood Plain YES PARTIAL
7. Size of Lot: Front 39.2 Rear 45.16 Side 1 123.43 Side 2 106.33 Sq. Ft. 4356 SQ FT
11. Dimensions of Existing Structure (s) 1st Floor 48x32.3' 2nd Floor - Garage 21x24
12. Dimensions of Proposed Structure (s) 1st Floor 48x32.3 2nd Floor 48x29.63 Garage 21x24
13. Present Use of Property: SINGLE FAMILY HOME
14. Percentage of Existing Structure (s) to be demolished, if any 70 %
15. Has there been any past variances on this property? Yes X No _____
16. If so, state case # and resolution of variance application GARAGE FRONT PROPERTY SETBACK
17. Please indicate the type of variance or zoning ordinance interpretation requested:

FRONT, BACK, & EAST SIDE SETBACK, LOT COVERAGE

EXISTING: BUILDING 41% , EVERYTHING 60%

PROPOSED: BUILDING 43% , EVERYTHING 56%

INCREASE 2% , REDUCE COVERAGE 4%

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.

LOT SIZE VERY SMALL

- 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.

SMALL BUILDABLE AREA

- 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.

NOT EXTENDING PAST CURRENT BUILDING LINES

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

WILL NOT EFFECT MASTER PLAN

- 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.

~~WILL~~ REMAINING WITH-IN SAME FOOT PRINT LINES

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

NOT CHANGING THE USE

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

VERY CLOSE

- 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 one (1) year (12 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).

Melissa Moya 1-29-2020
Owner's Signature Date

Eric Jones 1/28/20
Appellant's Signature Date

VARIANCE (ZBA) APPLICATION CHECKLIST:

Eight (8) sets of plans must be submitted. The sets are for the individual use of the Zoning Board members and for 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.

Zoning Board of Appeals Application Form

Site (plot) Plan with the following information:

- Location and width of road(s) and jurisdiction (public or private road).
- Location and dimensions of existing/proposed construction.
- Dimensions, designation, and heights of existing structures on property clearly marked.
- Dimensions of property (lot lines).
- Location and dimensions of required setbacks.
- Measurement from each side of existing and proposed structure to the property lines.
- All easements.
- Any bodies of water (lake, stream, river, or canal) with water body name.
- Distance proposed structure and existing structures are from any body of water.
- Septic tank and field, sewer (grinder pump), and water well.
- All areas requiring variances clearly marked with dimensions and amount of variance requested.
- Any outstanding topographic features that should be considered (hills, drop-offs, trees, boulders, etc.)
- Any other information which you may feel is pertinent to your appeal.
- If the variance is to a setback requirement a licensed professional stamp shall be on the site plan.

Preliminary sketch plans:

a) Elevation plans:

- Existing and proposed grade
- Finished floor elevations
- Plate height
- Building height
- Roof pitch

b) Floor plans:

- Dimension of exterior walls
- Label rooms
- Clearly identify work to be done
- Location of floor above and floor below

c) All other plans you may need to depict the variance you're requesting (surveys, grading plans, drainage plans, elevation certificates, topographical surveys, etc.)

Proof of Ownership: Include one of the following:

- a) Warranty Deed – showing title transaction bearing Livingston County Register of Deeds stamps, OR
- 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 hearings are held 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 scheduled for that hearing.

Once the project has been scheduled 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 date of the hearing.

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/hearing:

- You and/or your representative (Lawyer, builder, contractor, relative, friend, etc.) must attend.
- Variance requests/appeals are taken in order of submission.
- Unless your variance request/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.
- ***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. You may bring the requirements for the Land Use Permit to the Township Zoning Department on the next business day.***
- 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.
- Rehearing requests may be charged \$200.00 for postage and newspaper costs in addition to the original \$500.00 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, three (3) sets of your final construction plans and three (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 6.8 (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 of the Zoning Board of Appeals to be valid."

Section 6.8 (E) 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.

VARIANCE STANDARDS:

Variance: (*definition*) 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.

Section 6.5 (C) & (D) of the Township Zoning Ordinance:

- 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.

Leonard C. Morgan

9670 Marshall Rd. South Lyon, MI 48176

248-277-8322

leonardcmorgan@gmail.com

2/4/2020

Hamburg Township

Re: Parcel ID#4715-31-402-015

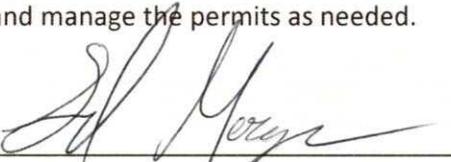
Dear Hamburg Township:

We have been working closely with Bruce Donovan, of Bruce Donovan Construction a Hamburg, Michigan firm to develop a renovation plan for our retirement home located at 2946 Indian Trail, as per the parcel ID# identified above.

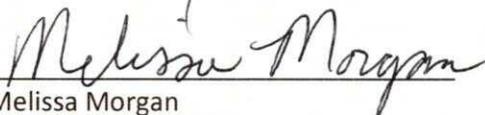
We would like to formally grant permission for Bruce to present an overview of our building plans and pull permits on our behalf to expedite the process.

With Bruce's construction experience and years of working collaboratively with this Township we're confident that he will be able to give you a much clearer and concise summary of the project, and permits being requested than we, the property owner could.

So please accept this signed and notarized letter as Mr. Donovan's authority to request and manage the permits as needed.


Leonard Morgan

1/4/2020
Date

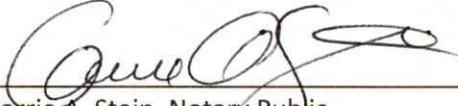

Melissa Morgan

1-4-2020
Date

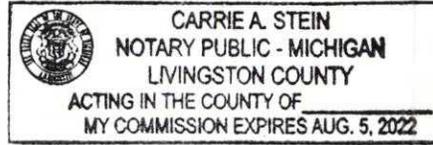
NOTARY ON FOLLOWING PAGE

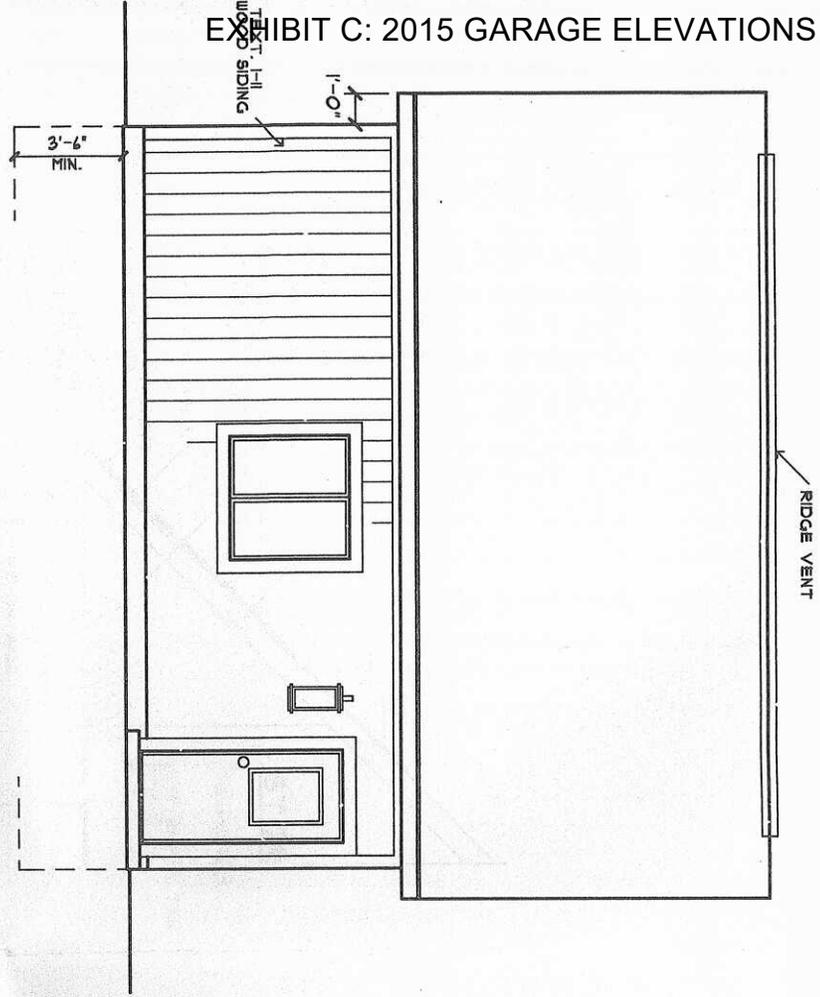
State of Michigan
County of Livingston

The foregoing instrument was acknowledged before me this 4th day of February by
Leonard Morgan and Melissa Morgan, who are personally known to me.



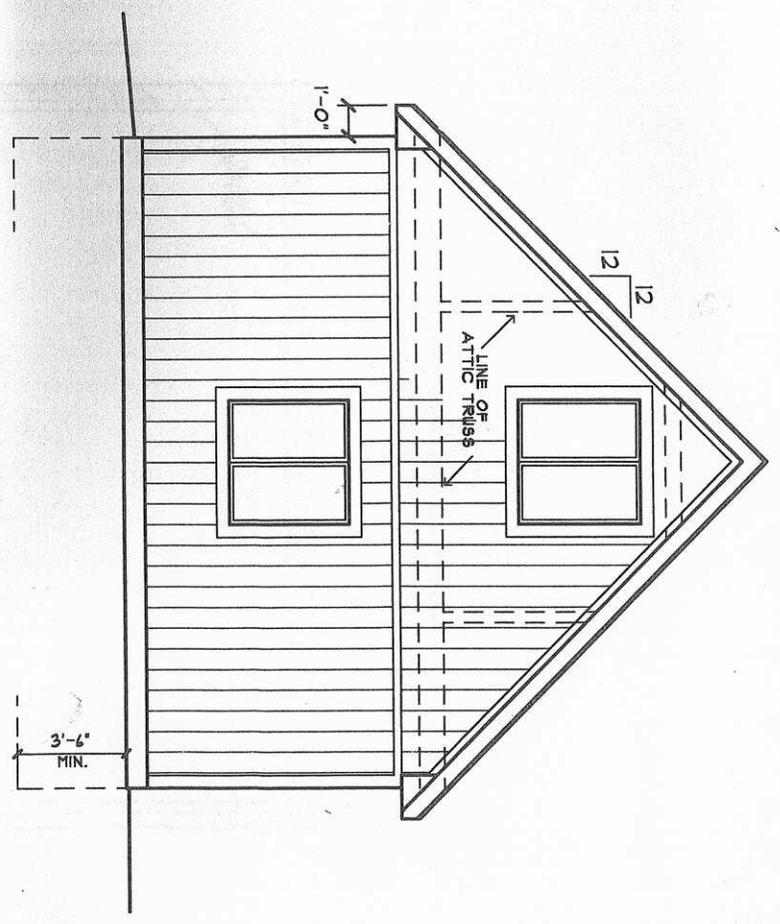
Carrie A. Stein, Notary Public
County of Residence: Livingston
Notary Expires: 8/5/2022





REAR ELEVATION

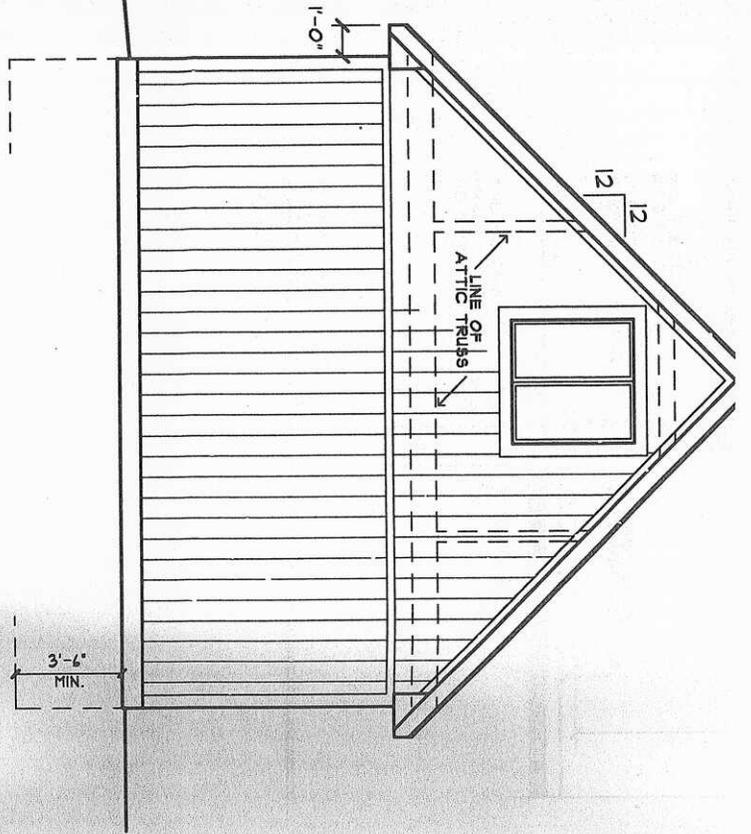
SCALE: 1/4" = 1'-0"



RIGHT SIDE

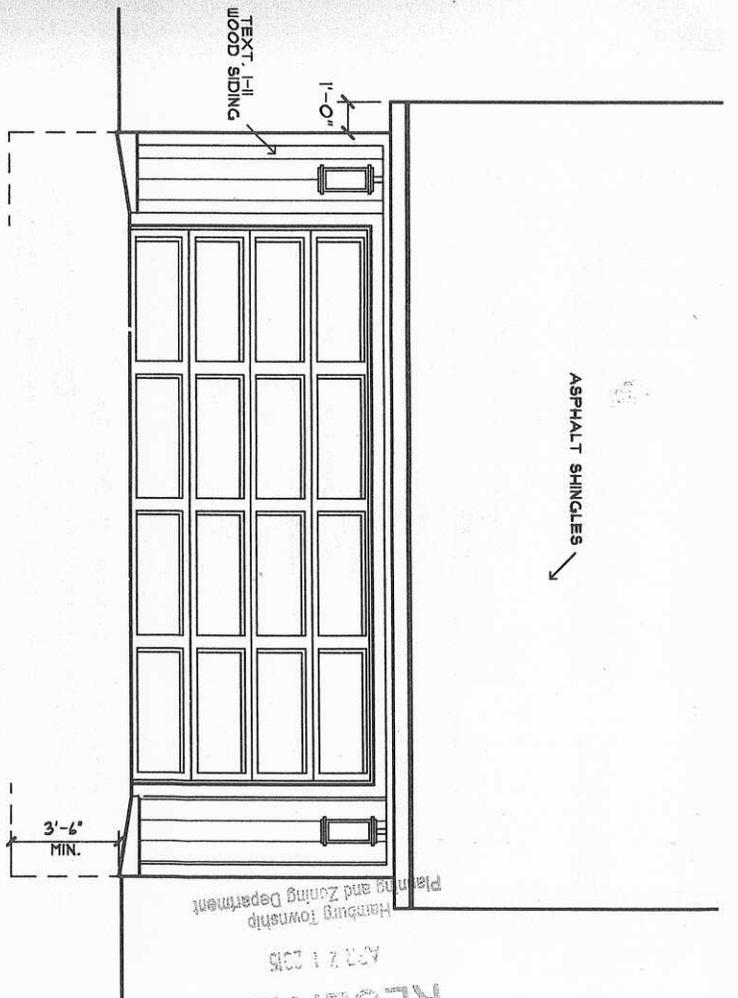
SCALE: 1/4" = 1'-0"

RIDGE VENT



LEFT SIDE

SCALE: 1/4" = 1'-0"



FRONT ELEVATION

SCALE: 1/4" = 1'-0"

RECEIVED
APR 21 2015
Hamburg Township
Planning and Zoning Department

HAMBURG TOWNSHIP ZONING BOARD OF APPEALS

Wednesday May 13, 2015

Hamburg Township Hall

10405 Merrill Rd., P.O. Box 726

Hamburg, Michigan 48139

7:00 p.m.

1. Call to order

The meeting was called to order by Commissioner Wiggle at 7:00 p.m.

2. Pledge to the flag

3. Roll Call

Present: Wiggle, Eckman, Neilson, Stefansky, and Preibe

Also Present: Scott Pacheco, Zoning and Planning Commission Administrator

4. Correspondence - None

5. Approval of the Agenda

Motioned by Jim Neilson and Supported by Stefansky to approve the agenda as presented.

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

6. Call to the public for any item not on the agenda at 7:02 p.m. There was no response. Thus, the call was closed at 7:03 p.m.

7. Variance Requests

7A: 4222 SHOREVIEW LANE ZBA 15-004

Commissioner Wiggle introduced the variance Case Number 2015-004 at 4222 Shoreview Lane, Whitmore, Lake, Michigan 48189 Parcel ID# 15-33-110-040. The variance is requested to allow a remodel and addition of an existing home. The addition will add 2,696 square feet of space to the existing 1,318 square foot main home. The addition will be 3 feet 8 inches from the south property line where 10 feet is required by the code and 18 feet 10 inches from the west property line where 25 feet is required by the code (Section 7.6.1). An expansion of an existing non-conforming structure that encroaches into the required setback requires approval of a variance by the Zoning Board of Appeals and the improvements will amount to more than fifty (50) percent of the market value of the existing non-conforming building and therefore Zoning Board of Appeals approval is required (section 11.3.2).

Wiggle asked if the applicant or the representative would come up and explain what the hardship or practical difficulty would be if the variance was denied.

Scott Mcelrath of Dangerous Architecture presented the project during the presentation he stated that the applicants would like to revise the project to eliminate the second story and slightly reduce the footprint.

Andy Eckman: Asked if the ZBA could act on this revision without renoticing the project.

Scott Pacheco: The ZBA could act on the revision by making it a condition of project approval that the project be changed to the new proposal because the new proposal decreased the proposed variance requests; however, if the ZBA wished to approve the project it would be better to re-notice to allow the surrounding property owner an opportunity to review the proposed changes.

Scott Mcelrath: continued to present the revised project explaining that the existing house was not conforming and would like to continue that nonconformity. To make the addition more estecically pleasing.

Jim Nielson: What is the problem with the adding of the 3 additional feet.

Scott Pacheco: The project was noticed as reconstruction of the deck in the same size and location.

Andy Eckman: The staircase is in addition to the 11 by 15 deck correct.

Scott Pacheco: yes

Motion by Tim Wiggle and Support Joyce Preibe to approve the variance application at 6260 Buskshore Drive to allow reconstruction the deck off of the lake side of the existing structure, because as conditioned the variance meets the variance standards of the Township Zoning Ordinance Section 6.5 (C) number 1 through 7 as discussed at tonight's meeting and as stated in the staff report provided. The deck will be 36 feet from the high water mark of Buck Lake where 50 feet is required by section 7.6.1 of the Township Zoning Ordinance. The deck shall be the same size (11X15 in addition to the stairs) and in the same location as the deck shown on the assessor's department records. Direct Staff to prepare a Memorialization of finding for the project.

Voice Vote: Ayes: 5 Nays: 0 Absent: 0

MOTION CARRIED

7E: 2946 INDIAN TRAIL ZBA 15-011

Commissioner Wiggle introduced the variance Case Number 2015-011 at 2946 Indian Trail, Whitmore Lake, Michigan 48189 Parcel ID# 15-31-402-015. Variance applications to allow construction of a 504 square foot detached garage addition. The project will require variances because the garage will be 0 feet from the existing structure on the property where 10 feet is required (Section 8.3.4), .7' from the north property line abutting the street where 15 feet is required (Section 8.3.2), 9.9 feet from the west property line where 10' is required (Section 8.3.2), and will have a building lot coverage of 37.7% were the maximum allowed by the code is 35% (Section 7.6.1).

Joyce Priebe Recused herself because she live across the street from this property.

Wiggle asked if the applicant or the representative would come up and explain what the hardship or practical difficulty would be if the variance was denied.

Lenny Morgan the property owner: Explains the reason they need the garage addition and explained the property. The neighboring houses are closer to the road right of way.

Andy Eckman: It appears that this new garage will be located against the garage.

Tim Wiggle: Why is this garage zero feet from the existing structure. Why would you not attach this structure?

Lenny Morgan: Because of the interior layout there is not a way to connect these two structures.

Tim Wiggle: Not sure if this building construction would be allowed by the fire code.

Andy Eckman: I am not concerned with building code or fire code that will need to be taken care of during building permits. Scott what is your opinion of this project?

Scott Pacheco: The subject site is very small, is only 45 feet wide and with the existing house location there are extraordinary circumstances with the lot. The roadway is located on the opposite side of the roadway easement and there is a 10 foot wide walkway easement to access the lake on the easement side of the property. The House is modest in size and is similar in size to the homes in the surrounding area. The

garage could be reduce to a smaller size or no garage could be required; however, other homes in the area have garages.

Tim Wiggle: DPW comments state that the garage will be built over garage and an alternate location should be looked at.

Scott Pacheco: The applicant will need to have approval from the DWP however, because this is Portage Lake Sewer Area they do allow sewer laterals to be built on top of.

Tim Wiggle: It looks like this garage will be located at a zero setback from the rear property line.

Scott Pacheco: No the project is setback to .7' from property lines

Scott Pacheco: Reads two correspondence into record one in favor and one against.

Motion by Andy Eckman and Support by Tim Wiggle to approve the variance application at 2946 Indian Trail to construct a 504 square foot detached garage addition as shown on the project plans received by Hamburg Township on April 21, 2015. The project requires variances to allow the garage to be 0 feet from the existing structure on the property where 10 feet is required (Section 8.3.4), .7' from the north property line abutting the street where 15 feet is required (Section 8.3.2), 9.9 feet from the west property line where 10' is required (Section 8.3.2),and will have a building lot coverage of 37.7% were the maximum allowed by the code is 35% (Section 7.6.1). As conditioned the proposed project meets the variance standards of the Township Zoning Ordinance Section 6.5 (C) number 1 through 7 as discussed at tonight's meeting and as stated in the staff report provided. Because the impermeable lot coverage is greater than 40% a drainage plan is prepared by a by a registered engineer or a registered Landscape Architect and approved by the Township Engineer will be required prior to issuance of a Land Use Permit. Direct Staff to prepare a Memorialization of finding for the project.

Voice Vote: Ayes: 4 Nays: 0 Abstain: 1 (Preibe)

8. Approval of the Minutes from the April 9, 2015 Regular Meeting

Motioned by Eckman second by Priebe to approve the minutes of April 9, 2015 along with the attached "Memorialization of the "Findings".

9. New Business -

Scott Pacheco: There will be on May 20, 2015 a workshop by MIplace called 2015 Placemaking Strategy Development Workshop in Howell from 1:30–8:30pm. Anyone interested may attend. First three hours are very informative.

Tim Wiggle: Wants ID badges.

Scott Pacheco: Talk to Brenda and get picture taken.

Motion to adjourn the meeting at 8:12 pm by Andy Eckman supported by Jim Nielson.

Voice Vote: Ayes: 5 Nays: 0 Absent: 0

Scott Pacheco, AICP
Planning and Zoning Director

The minutes were approved
as presented/corrected: _____

Commissioner's Signature



10405 Merrill Road ♦ P.O. Box 157
Hamburg, MI 48139
Phone: 810.231.1000 ♦ Fax: 810.231.4295
www.hamburg.mi.us

DPW/UTILITIES DEPT. REVIEW

I have reviewed ZBA Case # ZBA20-003 located at 2946 Indian Trail and offer the following:

[] The parcel is not on sewers.

[X] The parcel is serviced by the **Portage-Base Lakes Area Water & Sewer Authority**.

- The owner is requesting multiple variances to construct a 2-story dwelling that will encroach into the rear yard set-back, side yard set-back, building lot percentage (%) coverage and the impervious lot coverage requirements.
- It appears that the existing sewer service lateral is located on the northeast side of the property (see attached sketch).
- Based on the "as-built" drawing for the sewer service lateral location the new home location will not interfere with the sanitary sewer structures if this variance is granted.
- The owner or Builder must contact Tony Randazzo at (810) 231-1000 x 214 or via email at trandazzo@hamburg.mi.us for completion of the PBLAWSA review and sign-off.

The property owner or Builder must contact Miss Dig at 1-800-482-7171 at least 3 days prior to any digging or excavation work to confirm the location of the sewer and other utility locations.

Dated: May 6th, 2020

Respectfully submitted,

Brittany K. Campbell
Hamburg Township Utilities Coordinator

The proposed home location will not pose an issue with the location of service lateral location. The Utilities Department has no objections to the request for variance if approved by the Portage-Base Lakes Sewer Authority.

Your Property Sketch

The sketch shows a house with the address 2946. A well is located to the left of the house. A sewer line is shown with a yellow highlight and an arrow pointing towards the house, labeled 'SEWER'. A gas line is shown to the right of the house. A dry well is located below the house. A note indicates '3" conduit runs through slab and into small Drainfield, Exits underground'. A note also says 'NO GARAGE'. The street is labeled 'INDIAN TRL. DR.'. A note on the left says '* BUILDING HOOD. IS UNDER BID FOR HOUSING SOFTENER AND OTHER ASPECTS'. A note near the house says 'EXISTING SOFTENER'.

Location of items to be shown on your property sketch:

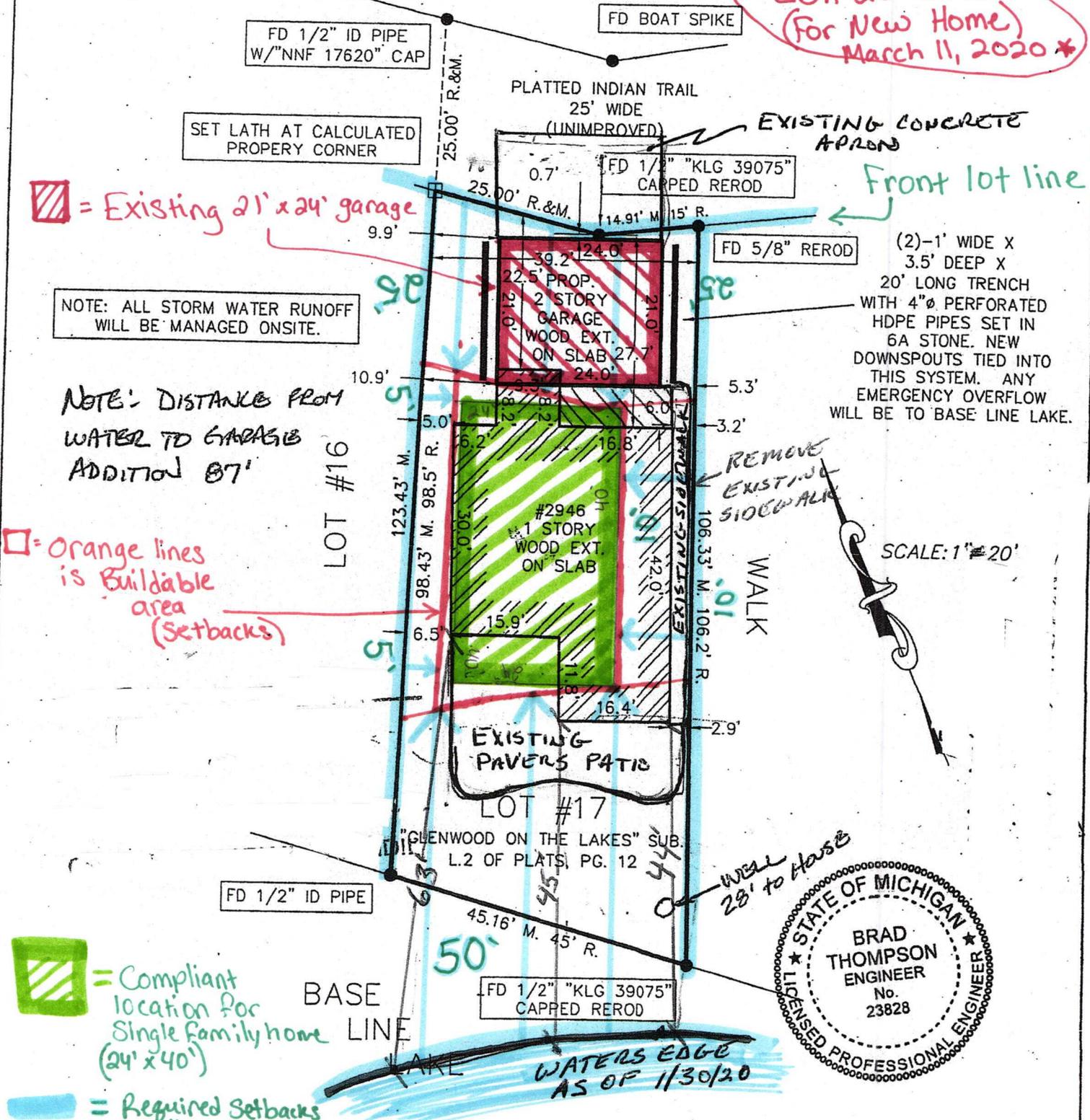
1. Existing sewer line
2. Well including water and electric line
3. Utilities including gas, electric, phone cable
4. Old septic tank (if known)
5. Existing drywells
6. Location of softener
7. Proposed softener discharge drywell

Tax ID: 15-31-402-015

SKETCH OF RELOCATED PROPERTY CORNERS, EXISTING & PROPOSED BUILDING LOCATIONS & DRAINAGE PLAN FOR NEW GARAGE

Exhibit D

ZBA 20-003 (For New Home) March 11, 2020



NOTE: ALL STORM WATER RUNOFF WILL BE MANAGED ONSITE.

NOTE: DISTANCE FROM WATER TO GARAGE IS ADDITION 87'

Orange lines is buildable area (setbacks)

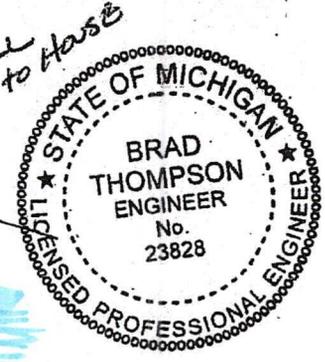
Compliant location for Single family home (24' x 40')

Required Setbacks + lot lines

(2)-1' WIDE X 3.5' DEEP X 20' LONG TRENCH WITH 4" PERFORATED HDPE PIPES SET IN 6A STONE. NEW DOWNSPOUTS TIED INTO THIS SYSTEM. ANY EMERGENCY OVERFLOW WILL BE TO BASE LINE LAKE.

REMOVE EXISTING SIDEWALK

SCALE: 1" = 20'



Brad Thompson
Brad F. Thompson, P.E., P.S.#23828

REV. 6-16-15: ADDED DRAINAGE NOTE
 REV. 6-3-15: ADDED DRAINAGE
 REV. 4-20-15: REDUCED GARAGE WIDTH
 REV. 4-1-15: ADDED PROPOSED GARAGE

SH. 1 of 1

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
Patricia Hughes

**Hamburg Township
Zoning Board of Appeals Minutes
Hamburg Township Board Room
Wednesday, March 11, 2020
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: Priebe, Watson, Dolan, Auxier, Rill

Absent: None

Also Present: Amy Steffens, Planning & Zoning Administrator and 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 20-0002

Owner: Zalewski Construction Co.
Location: Vacant on Rush Lake Road, west of 3267 Rush Lake Road
Pinckney MI 48169

Parcel ID: 15-17-302-093

Request: Variance application to allow for the construction of a two-story, 1,872 square foot dwelling with an 864-square foot walk-out basement, an attached 420-square foot garage, and an 80-square foot elevated deck on the dwelling's north façade. The dwelling will have a nine-foot setback from a regulated wetland and the elevated deck will have a two-foot setback from a regulated wetland (50-foot setback from a regulated wetland required, Section 9.9.3.B).

Larry Zalewski, property owner, described the request to construct a home with a nine-foot setback and an elevated deck with a two-foot setback.

Amy Steffens, Zoning Administrator, presented the staff report. She stated that the subject site is a 0.18-acre parcel that fronts onto Rush Lake Road to the south and the Rush Lake Hills Golf Club to the north; single-family dwellings are located to the south and east. The site is unimproved. If approved, the variance request would allow for the construction of a two-story, 1,872 square foot dwelling with an 864-square foot walk-out basement, an attached 420-square foot garage, and an 80-square foot elevated deck on the dwelling's north façade. The dwelling will have a nine-foot setback from a regulated wetland and the elevated deck will have a two-foot setback from a regulated wetland where a 50-foot setback from a regulated wetland is required. In 2018, the subject site and the site to the east applied for, and were granted, a property boundary adjustment. The adjustment resulted in the subject site gaining an additional 20 feet of width at the road for a lot width of 60 feet. Because this was a property boundary adjustment between two existing platted lots, no verification of building envelope, driveway approval, or sanitary requirements was requested or verified. There are existing, regulated wetlands on the property that require a 50-foot setback per Section 9.9.3.B. regardless of lot size. The addition of property from the adjacent site does help to make the subject site more conforming to the zoning ordinance in terms of lot size and dimensional requirements. Section 9.9.3. requires a 50-foot setback from the boundary or edge of a regulated wetland. However, the Zoning Administrator or body undertaking plan review may reduce or eliminate the setback upon review of a request which details the future protection of the natural feature(s) and or mitigation of the natural feature(s). The ZBA may either deny or grant the variance based on findings related to the proposed variance, or request that the owner detail the future protection of the wetland and direct the zoning administrator to administratively approve the encroachment. The ZBA could request a property owner protect the wetlands with conditions. The homeowner could submit an engineered drainage plan for the property, prepared either by a civil engineer or registered landscape architect that would ensure runoff from the garage does not drain into the wetlands. The homeowner could construct a physical barrier along the wetlands to preserve the wetland from further encroachment by lawn equipment or any other trampling of the area. The homeowner could record an open space or wetland easement over the wetland portion of the site to restrict development and interference with the natural vegetation of the area in the future. A wetlands delineation report has been submitted to Hamburg Township and forwarded to EGLE's Water Resources Division for comment. The applicant should show the limits of grading on the plot plan prior to the issuance of any permits for earth work or construction. Any allowed setback variance granted as a result of this hearing will apply to the identified boundary of the wetland.

Steffens outlined the Standards of Review. The 50 foot regulated wetlands setback requirement applies generally to all properties in Hamburg Township. However, the presence of this regulated wetland encroachment onto the parcel is not a circumstance that generally is found on other properties in the same zone or district. The location of the wetland on this property adds practical difficulty to siting a dwelling within all required setbacks. The design preference of the applicant is partly driving the necessity of the variance request; the size of the house could be reduced thereby moving farther away from the regulated wetlands or the house could be reconfigured to make better use of the southern portion of the lot. There is an exceptional or extraordinary circumstance or condition applicable to the property involved that does not apply to other properties in the same district or zone. The wetlands area does make placement of a compliant structure on the site difficult, although the dwelling could be reduced in size or reconfigured to reduce the encroachment into the wetlands setback. She provided an excerpt from the Hamburg Township Master Plan, Natural Resources Management Strategies and stated that the intent of the 50-foot setback is to protect the environmental features that serve important ecological purposes. Wetlands protect against flooding, provide wildlife habitat, and naturally filter contaminants from water. Because of the presence of the wetland encroachment on the property, the request for the variance is not of so general or recurrent a nature. 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. The Master Plan recommendations and the Zoning Ordinance requirements for wetlands setbacks clearly intend to protect the integrity of ecological features and their ability to continue to function without impediment. Staff also is considerate of the property rights of the owner and the intended purpose of the subject site, that is, to be used for a single family dwelling. The ZBA should balance the ecological importance of the wetlands and the property rights of the applicant. Requesting that the house size be reduced to provide a greater wetlands setback, placing the wetlands into an easement,

providing a drainage plan, and creating a physical barrier to the wetlands would all be appropriate considerations that would permit the reasonable use of the land.

Chairperson Priebe opened the public hearing.

David Flowers, 3230 Rush Lake Road, raised concerns that his lot, which sits higher than the subject lot, would flood if the proposed dwelling were built within 9 feet of the wetlands.

Peggy Pietras, 3253 Rush Lake Road, raised concerns that her lot, raised flooding concerns.

Chairperson Priebe closed the public hearing.

Member Dolan asked if there were wetlands mitigation measures that could be implemented. Staff indicated that there were several options listed in the staff report.

Member Auxier asked if a grading plan had been submitted. Applicant indicated a plan had not been submitted.

Motioned by Rill, supported by Auxier, to table the request to the April 8, 2020 hearing to allow the applicant the opportunity to submit a grading plan.

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

b) ZBA 20-0003

Owner: Leonard and Melissa Morgan
Location: 2946 Indian Trail Dr.
Pinckney MI 48169
Parcel ID: 15-32-402-015
Request: Variance application to allow for the construction of a two-story, 1,272 square foot dwelling with a 1,269 square foot second story. The dwelling will have a 21.7-foot north front yard setback (25-foot front yard setback required, Section 7.6.1.), and a 2.9-foot east side yard setback, resulting in an aggregate side yard setback of 7.9 feet (15-foot aggregate side yard setback required, Section 7.6.1. fn. 4), and a 44-foot south rear yard setback from the ordinary high water mark of Base Line Lake (50-foot setback from the OHM required, Section 7.6.1. fn. 3), and a total lot coverage of 56 percent, (Maximum 50 percent lot coverage allowed, Section 7.6.1. fn. 7).

Bruce Donovan, applicant's agent, described the variance request and explained that there is a platted walkway to the east of the subject site that presents an extraordinary circumstance to the subject site because the walkway would not be developed for single-family residential uses. Therefore, a reduced east side yard setback would not be injurious to the adjacent property.

Leonard Morgan, property owner, explained the request and indicated the current house is not suitable for the owner's needs.

Brittany Stein, Zoning Coordinator presented the staff report and alternative site plan with a compliant dwelling. She stated that the subject site is a 4,300-square foot lot that fronts onto Indian Trail Drive to the north, Base Line Lake to the south, and single family dwellings are located to the north, east, and west of the site. The existing dwelling is one-story 1,550 square foot, with a detached 504 square foot garage. If approved, the variance request would permit the construction of a two-story, 1,272 square foot dwelling with a 1,269 square foot second story. The dwelling will have a 21.7-foot north front yard setback where a 25-foot front yard setback is required, a 2.9-foot east side yard setback, resulting in an aggregate side yard setback of 7.9 feet where a 15-foot aggregate side yard setback is required, and a

44-foot south rear yard setback from the ordinary high water mark of Base Line Lake where a 50-foot setback from the OHM is required. The lot coverage, will be 56 percent, where a maximum 50 percent lot coverage is allowed. She discussed the dwelling's existing and proposed setbacks. Based on FEMA's Flood Insurance Rate Map (FIRM), a portion of the site lies within the 100 year floodplain. Any development of this site would require an elevation certificate. If the location of the proposed addition and location of the existing dwelling is found to be in the floodplain, the top of the bottom floor must be at least one-foot above the base flood elevation. An Elevation Certificate must be provided prior to issuing a land use permit. She stated that this subject site is a 4,300 square foot lot that is approximately 39 feet wide at the street and 45 feet wide at the lake. There is a 10-foot wide platted walkway to the east of this site, which is a designated walkway to provide access to the lake for the property owners within the Glenwood on the Lakes subdivision. There is a 25-foot wide platted unimproved right of way for Indian Trail Dr. in front of the lot. Additionally, there is a platted 60-foot wide right of way also for Indian Trail Dr. part of the Tamarina Subdivision Plat of 1961, which is north of the Glenwood on the Lakes plat. The property abuts the water, requiring a 50-foot setback from the Ordinary High Water Mark of Base Line Lake. A variance request for the garage was approved in May 2015 to have a 0.7-foot front yard setback, where a 15-foot setback would be required. The garage is now existing, and the proposal is to attach the new home to the garage. This variance request was approved based on these reasons: the small size of the lot, the location of the existing home, the location of the traveled roadway, and the walkway to the east.

Stein discussed the Standards of Review. This subject site is a 4,300 square foot lot that abuts the water, requiring a 50-foot setback from the Ordinary High Water Mark of Base Line Lake, where the proposed house will be 44 feet from the water. Additionally, all WFR zoned properties require the primary structure to have a 25-foot front yard setback. Both setback requirements are intended to provide adequate space, open vistas, and privacy throughout neighborhoods and between structures on smaller residential lots. The required front yard setback is 25 feet, the current house is setback 27.7 feet. The proposed house would be setback from the front property line at 21.7 feet and attached to the garage. Because the lot is less than 60 feet wide in WFR zoning district, the lot has reduced side yard setbacks of an aggregate of 15 feet. The current single-story house has an aggregate side yard setback of 7.9 feet. However, proposed is a two-story house that increases the footprint of the non-conforming side yard setback. The proposed new house would be constructed at the same side yard setbacks as the existing house, at 5 feet from the west side property line and 2.9 feet to the east side property line, leaving an aggregate side yard of 7.9 feet. There is no exceptional or extraordinary circumstance of condition applicable to the property involved that does not apply to other properties in the same district or zone. The possibility of increased financial return shall not be deemed sufficient to warrant a variance. There are 16 existing homes within 300 feet of the subject site. The average size of the homes within 300 feet of the subject lot is approximately 2,000 square feet, and the proposed dwelling would be 1,272 square feet, attached to the existing 504 square foot garage. A substantial property right is not preserved based on granting a variance for a particular architectural design. The proposed dwelling, in the same footprint as the existing home, is a personal preference of the property owners. The home could be redesigned and reconfigured to meet the required setbacks. Based on the request to rebuild a single family dwelling, there is a compliant location on the property for a new two story single family dwelling with a 960 square foot footprint. The existing home is setback an aggregate of 7.9 feet to the side property lines, and currently 44 feet from the Ordinary High Water Mark. The proposed house would also have these same setbacks. The existing house is 27.7 feet setback from the front lot line, and the proposed house would be 21.7 feet to the front lot line, where 25 feet is required; therefore increasing the non-conformity on the lot. The demolition of a single-story dwelling and construction of a new two-story single family dwelling with a larger footprint at the same side yard setbacks would have an increased impact to surrounding properties. The ordinance requirement for these required setbacks is intended to provide adequate space, open vistas, and privacy throughout neighborhoods and between structures on smaller residential lots. It is encouraged to construct a more compliant dwelling on the lot to decrease the impact on surrounding properties. The subject site is in the North Chain of Lakes planning area of the Master Plan. The proposed request would not adversely affect the purpose or objectives of the Master Plan. The subject site is a residentially zoned, developed, and used property. The site is 4,300 square feet, with a compliant buildable area on the property for a single-family dwelling. The proposed location of the new home is a personal preference and is not a condition specific to the subject site. There is no condition or situation that is so general or recurrent a nature as to warrant approval of the proposed variance request. A home a smaller size could comply with the required front and side yard setback standards and ordinary high water mark setback standards. The lot coverage could also be reduced by decreasing the size of the patio and other sidewalks on the property.

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

Member Dolan raised the possibility that the house could be reduced in size, similar to the plan presented by staff. Discussion was held between members, staff, agent, and owner.

The agent and owner requested that the item be tabled to the April 8, 2020 hearing to allow a revised site plan to be submitted.

Motion by Dolan, supported by Rill, to table the request to the April 8, 2020 hearing to allow the owner to submit revised plan that reduced the dwelling size and reduced lot covered to below 50 percent.

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

8. New/Old business

- a) Approval of January 8, 2020 ZBA Minutes

Motion by Auxier, supported by Rill

To approve the minutes of the January 8, 2020 meeting minutes as written

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

- b) Memorialization of findings for ZBA 19-0019 and 20-0001.

9. Adjournment:

Motion by Auxier, supported by Dolan

To adjourn the meeting

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

The meeting was adjourned at 8:01 p.m.

Respectfully submitted,

Amy Steffens, Planning & Zoning Administrator

Julie Durkin, Recording Secretary

The minutes were approved as presented/corrected: 5-13-20


Chairperson Priebe



Zoning Board of Appeals Staff Report



AGENDA ITEM: 7b

TO: Zoning Board of Appeals
(ZBA)

FROM: Erik Perdonik

HEARING DATE: June 10, 2020

SUBJECT: ZBA 20-0005

PROJECT SITE: 5313 Gallagher Blvd.
TID 15-27-301-201

**APPLICANT/
OWNER:** Dennis J. Pennington

PROJECT: Variance application to permit the construction of a 12-foot by 15-foot detached accessory structure. The accessory structure will have an eight-foot setback from the boundary or edge of a regulated wetland (50-foot setback from the boundary or edge of any regulated wetland required, Section 9.9.3.B.1).

ZONING: Waterfront Residential District (WFR)

Project Description

The subject site is an approximately 38,769-square foot (0.89-acre) parcel that fronts on Gallagher Boulevard to the west and Strawberry Lake to the east. An existing two-story, single-family dwelling with an attached garage is located on the site, with a combined footprint of approximately 2,176 square feet. Single-family dwellings are located to the north and west of the site, and mostly unimproved land used for boat launching is located to the south. There is a regulated scrub/shrub wetland area approximately 0.20 acres in area along the southern portion of the site, comprising approximately 22 percent of the total site area.

If approved, the variance request would permit the construction of a 12-foot by 15-foot (180-square foot) detached accessory structure. The accessory structure will have an eight-foot setback from the boundary or edge of a regulated wetland, where a 50-foot setback from the boundary or edge of any regulated wetland is required (Section 9.9.3.B.1). The regulated wetland boundary has been delineated by the applicant consistent with Section 9.10.

Project History Overview

In July of 2016, the applicant applied for a Land Use Permit to construct a 26-foot by 50-foot garage that would have encroached into the wetlands along the southern portion of the site. Land Use Permit 16-0337 was issued for the construction of the garage. The garage was never constructed and the Permit expired in July of 2017.

In July of 2017, the applicant again applied for a Land Use Permit to construct the same garage that was approved via Land Use Permit 16-0337. During review of the project, Staff questioned the presence of wetlands on the site and directed the applicant to contact Jeff Pierce with the Michigan Department of Environmental Quality (DEQ) Water Resources Division.

In September of 2017, Jeff Pierce issued a letter indicating that wetlands are present on the subject site, that the proposed accessory structure would encroach into the wetlands, and that such encroachment would require a DEQ permit. As a result, the applicant reduced the size of the proposed structure, removed it from the wetlands, and again applied for a Land Use Permit. Upon review of the Permit, Staff found that the proposed structure would not meet the 50-foot minimum setback from a regulated wetland (Section 9.9.3.B.1) and informed the applicant of the possibility of a variance application.

At the November 8, 2017 Regular Meeting of the Zoning Board of Appeals, the Board granted variance application ZBA 17-021, permitting the construction of a smaller 24-foot by 35-foot detached accessory structure, to be located no less than eight feet from the regulated wetland boundary or edge.

In April of 2018, the applicant applied for a Land Use Permit to construct a smaller 12-foot by 30-foot detached garage in accordance with ZBA 17-021. This Permit (18-0118) was issued, amended in May of 2018 to indicate an increase in height of the structure, and it expired in April of 2019.

Finally, in May of 2020, the applicant applied for the second variance before you tonight; this time to construct an even smaller 12-foot by 15-foot detached accessory structure eight feet from the regulated wetland boundary or edge.

Floodplain Management Considerations

The Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM) indicates that a portion of the subject site is within the 100-year floodplain. As a result, any development of the site will require an Elevation Certificate. Hamburg Township participates in the National Flood Insurance Program (NFIP). Proper enforcement of the building code standards is a prerequisite for 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. If the location of the proposed accessory structure is found to be within the floodplain, the floor must be at least at the Base Flood Elevation (BFE), as evidenced by an Elevation Certificate to be provided prior to the issuance of a Land Use Permit. The structure's floor can be below the BFE only if the structure will be anchored and vented to allow floodwaters to pass through.

The image below indicates the “AE” Flood Zone of Strawberry Lake:



Wetland Impact Considerations

A wetland delineation report prepared by ASTI Environmental dated November 1, 2017 was received by Staff on November 8, 2017. Any variance from setback requirements as a result of this hearing will apply to the delineated boundary shown in that report. The report is attached hereto as Exhibit D and hereby incorporated by reference.

The Zoning Board of Appeals may request that an applicant protect the wetlands in one or more of the following ways:

1. Construct a physical barrier along the wetland boundary to protect the wetlands from any encroachment or trampling.
2. Record an open space or wetland easement over the wetland portion of the site to restrict development and interference with any natural vegetation in the area in the future.
3. Submit an engineered drainage plan for the site, prepared by either a civil engineer or a landscape architect, which would ensure that runoff from the accessory structure does not drain into the wetlands.

Standards of Review

In accordance with Section 6.5.C of the Hamburg Township Zoning Ordinance, the ZBA's decision on this matter is to be based on findings of fact to support the standards provided below. The applicable discretionary standards are listed below in **bold typeface**, followed by Staff's analysis of the request as it relates to these standards. A variance may be granted only if the ZBA finds that all of the following standards 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 50-foot setback required from the boundary or edge of a regulated wetland under Section 9.9.3.B.1 of the Zoning Ordinance applies generally to all properties in Hamburg Township, regardless of the district or zone in which they are located. However, the presence of the approximately 0.20-acre scrub/shrub wetland along the southern portion of the subject site, comprising approximately 22 percent of the 0.89-acre site, is an exceptional or extraordinary circumstance or condition applicable to the subject site that does not apply generally to other properties in the same district or zone, the WFR District.

The size and location of the approximately 0.20-acre wetland certainly limits available options for siting a detached accessory structure within the required setbacks; however, there is reasonable space on the subject site to construct an accessory structure of the proposed size that meets the 50-foot setback from the regulated wetland required under Section 9.9.3.B.1, and the 10-foot side yard and 25-foot front yard setbacks required for all properties within the WFR District under Section 7.6.1 of the Zoning Ordinance.

- 2. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity. The possibility of increased financial return shall not be deemed sufficient to warrant a variance.**

The variance preserves a substantial property right possessed by other property in the same zone and vicinity; in this case, the right to construct a complaint detached accessory structure in a zone in which it is customarily permitted, the WFR District. However, a structure of the proposed size, if it were situated differently, could fully comply with the Zoning Ordinance. Nevertheless, the applicant has already chosen to reduce the size of the accessory structure by 660 square feet since a variance was approved for a larger 840 square foot accessory structure at the ZBA's November 8, 2017 Regular Meeting.

- 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.**

So long as efforts are made to ensure protection of the wetland, the granting of such variance 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, because the proposed structure is to be located such that it is approximately 80 feet from the nearest property line adjoining another single-family residential property, and such that it is

unforeseeable that it would significantly impair visibility, especially since the structure is proposed to be 16 feet in height, 15 feet in length, and 12 feet in width, giving it a relatively small overall profile from any angle. In addition, the structure is proposed to be set back 192 feet from Gallagher Boulevard and approximately 100 feet from the ordinary high water mark (OHWM) of Strawberry Lake, which more than satisfies the 25-foot front yard and 50-foot OHWM setbacks required under the Zoning Ordinance.

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 within the South Hamburg/Strawberry planning area of the Master Plan, which envisions primarily rural, low-density, single-family residential development (one unit per two acres) in the areas north of Strawberry Lake Road. Because the variance request does not propose an increase in density beyond the one existing dwelling, granting the request will not adversely affect the purpose or objectives of the Master Plan.

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

The condition or situation of the subject site for which the variance is sought is not of so general or recurrent a nature in light of the presence of the approximately 0.20-acre scrub/shrub wetland along the southern portion of the subject site, comprising approximately 22 percent of the 0.89-acre site, and the required 50-foot setback from such wetland that results.

6. Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district.

The use of the site is presently single-family residential, which is a use permitted by right in the WFR District in which it is located, and granting a variance to permit the construction of a complimentary detached accessory structure for personal storage use will not change the present use.

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

With the construction of the existing dwelling and garage, reasonable use of the land is already permitted. Furthermore, a complaint detached accessory structure can be sited fully in compliance with the Zoning Ordinance, despite the limitations caused by the existence of the wetland. Nevertheless, the applicant has already chosen to reduce the size of the accessory structure by 660 square feet since a variance was approved for a larger 840 square foot accessory structure at the ZBA's November 8, 2017 Regular Meeting.

"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 approval of the variance request considering a thorough review and discussion among ZBA members of the surrounding impacts, and any other potential options for the applicants to redesign the proposed accessory structure to be more compliant with the Zoning Ordinance.

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 Recommendations

The ZBA should consider one or more of the following as conditions of project approval; any conditions of approval should be enacted prior to the issuance of a Land Use Permit:

1. The applicant shall submit an Elevation Certificate demonstrating that the floor of the proposed accessory structure is at the BFE, or if the structure will be below the BFE, the applicant shall demonstrate that it will be anchored and vented to allow floodwaters to pass through.
2. The applicant shall construct a physical barrier along the wetland boundary to protect the wetlands from any encroachment or trampling.
3. The applicant shall record an open space or wetland easement over the wetland portion of the site to restrict development and interference with any natural vegetation in the area in the future.
4. The applicant shall submit an engineered drainage plan for the site, prepared by either a civil engineer or a landscape architect, which would ensure that runoff from the accessory structure does not drain into the wetland area.
5. The applicant shall submit a site plan indicating the limits of any grading.

Approval Motion

Motion to approve variance application ZBA 20-0005 at 5313 Gallagher Boulevard to permit the construction of a 12-foot by 15-foot detached accessory structure. The accessory structure will have an eight-foot setback from the boundary or edge of a regulated wetland (50-foot setback from the boundary or edge of any regulated wetland required, Section 9.9.3.B.1).

Variance approval is granted based on the following conditions: (INSERT CONDITION(S) FROM ABOVE). The variance meets variance standards one (1) through seven (7) of Section 6.5 of the Hamburg Township Zoning Ordinance, and a practical difficulty exists on the subject site when strict compliance with the Zoning Ordinance standards is applied, as discussed at the meeting this evening and as presented in this staff report. The Board directs Staff to prepare a memorialization of the ZBA's findings for the request.

Denial Motion

Motion to deny variance application ZBA 20-0005 at 5313 Gallagher Boulevard to permit the construction of a 12-foot by 15-foot detached accessory structure. The accessory structure will have

an eight-foot setback from the boundary or edge of a regulated wetland (50-foot setback from the boundary or edge of any regulated wetland required, Section 9.9.3.B.1). The variance does not meet variance standards one (1), two (2), or seven (7) of Section 6.5 of the Hamburg Township Zoning Ordinance, and no practical difficulty exists on the subject site when strict compliance with the Zoning Ordinance standards is applied, as discussed at the meeting this evening and as presented in this staff report. The Board directs Staff to prepare a memorialization of the ZBA's findings for the request.

Exhibits

Exhibit A – Application Materials

Exhibit B – Site Plan

Exhibit C – Construction Plans

Exhibit D – ASTI Environmental Wetland Delineation Report dated November 1, 2017

Exhibit E – Email from Jeff Pierce (DEQ) dated October 24, 2017

Exhibit F – Hamburg Township Utilities Review

Exhibit G – November 8, 2017 ZBA Meeting Minutes

ZBA Case Number

ZBA20-0005

EXHIBIT

HAMBURG TOWNSHIP
Date 05/18/2020 12:03:33 PM
Ref ZBA2000-05
Receipt 1228326
Amount \$500.00



A:
APPLICATION
Hamburg
Township
a great place to grow

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: MAY 15, 2020
2. Tax ID #: 15- 27 - 301 - 201 Subdivision: STRAWBERRY PT. BLUFFS Lot No.: 122
3. Address of Subject Property: 5313 GALLAGHER BLVD
4. Property Owner: DENNIS J. PENNINGTON Phone: (H) 586-506-1225
 Email Address: D.PENNINGTON@AMERITECH.IIET (W) _____
 Street: 5313 GALLAGHER BLVD City HAMBURG TWP State MI
5. Appellant (If different than owner): _____ Phone: (H) _____
 E-mail Address: _____ (W) _____
 Street: _____ City _____ State _____
6. Year Property was Acquired: 2015 Zoning District: _____ Flood Plain _____
7. Size of Lot: Front 135 Rear 125 Side 1 271 Side 2 322 Sq. Ft. 42,690
11. Dimensions of Existing Structure (s) 1st Floor 52x28 2nd Floor 24x30 52x28 Garage 24x30
12. Dimensions of Proposed Structure (s) 1st Floor 12x15 2nd Floor _____ Garage _____
13. Present Use of Property: RESIDENCE
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 _____
17. Please indicate the type of variance or zoning ordinance interpretation requested:
TO BUILD A SHED WITHIN 8' OF RECENTLY DESIGNATED WETLANDS

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.

YES. WETLANDS ARE PRESENT.

- 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.

ALLOW FOR STORAGE of LANDSCAPE + SNOW EQUIPMENT, KAYAKS, WHEEL BARROW, TABLES CHAIRS, ETC. THAT ARE NOW STORED ON MY DECK.

- 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.

IT WOULD HAVE NO NEGATIVE AFFECT ON WETLANDS (PLEASE SEE ASTI ENVIRONMENTAL'S MEMO DATED 3/12/18) ALSO, OUT OF VIEW OF NEIGHBORS.

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

PROPERTY REMAINS RESIDENTIAL

- 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.

IT IS A ONE TIME VARIANCE TO BUILD A SHED

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

PROPERTY REMAINS RESIDENTIAL

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

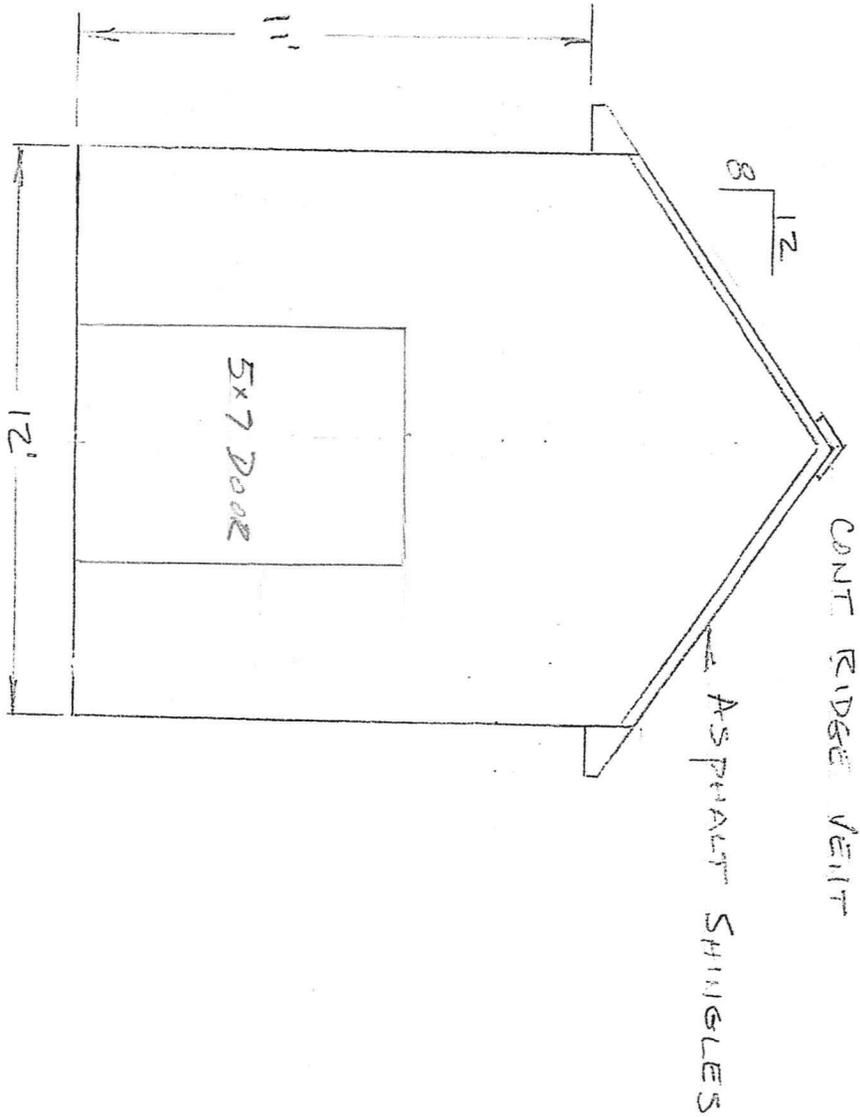
YES

- 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 one (1) year (12 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).

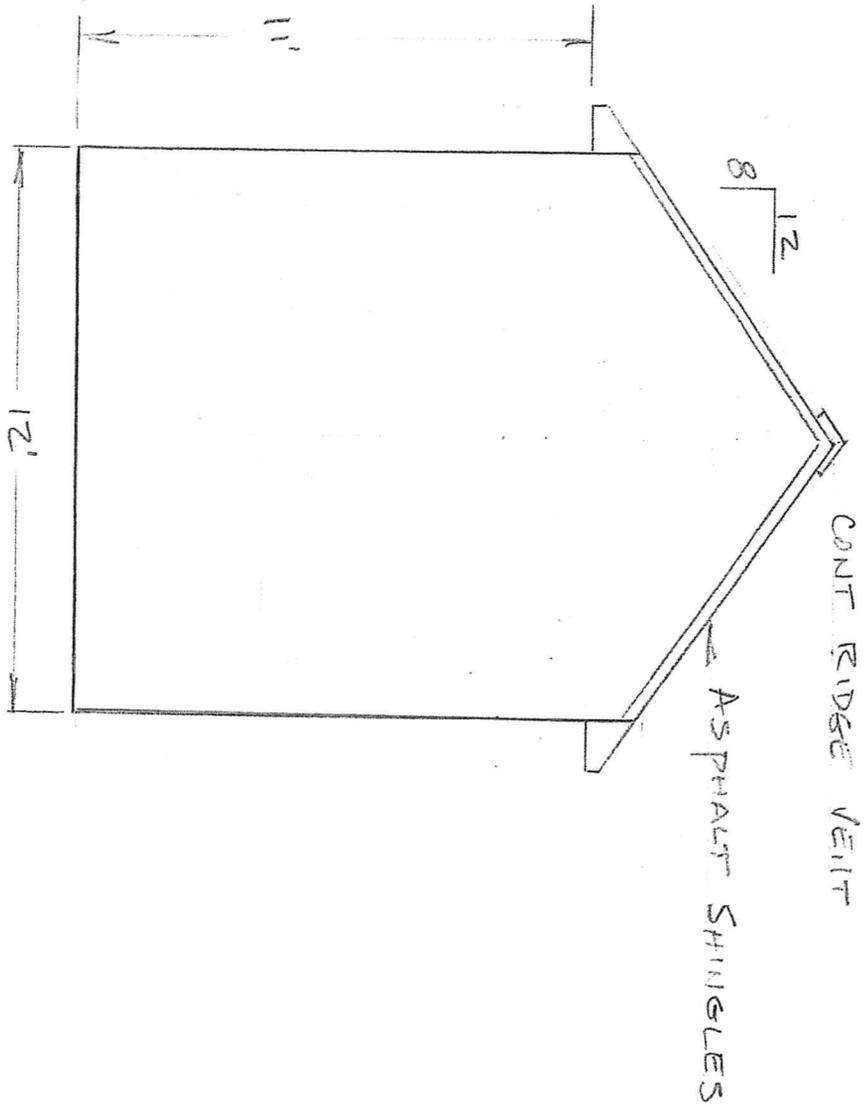
[Signature]
Owner's Signature 5/15/2020
Date

[Signature]
Appellant's Signature 5/15/2020
Date

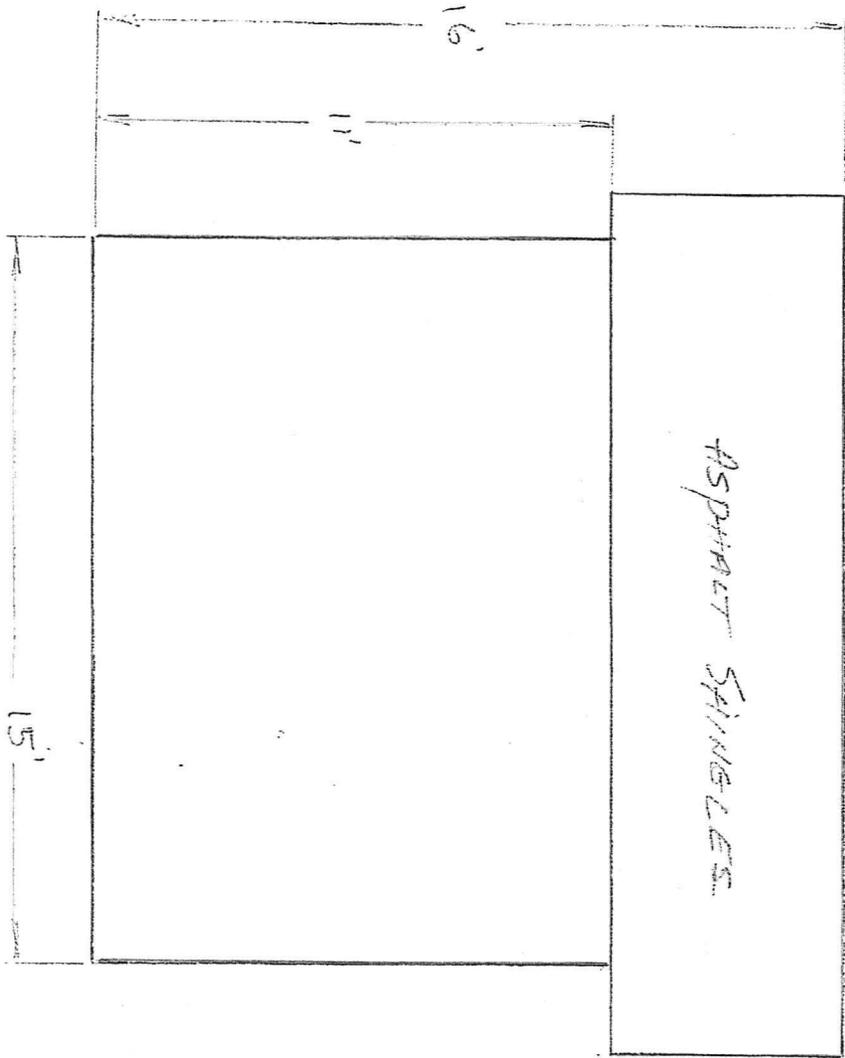
EXHIBIT C: CONSTRUCTION PLANS



FRONT ELEVATION



REAR ELEVATION



SIDE ELEVATION



RECEIVED

NOV 08 2017

Hamburg Township
Planning and Zoning Department

Investigation • Remediation
Compliance • Restoration

10448 Citation Drive, Suite 100
Brighton, MI 48116

Mailing Address:
P.O. Box 2160
Brighton, MI 48116-2160

800 395-ASTI
Fax: 810.225.3800

www.asti-env.com

November 1, 2017

Mr. Denny Pennington
5313 Gallagher Boulevard
Hamburg Township, MI 481989

*RE: Wetland Delineation and Jurisdictional Assessment
Property at 5313 Gallagher Boulevard
Hamburg Township, Livingston County, Michigan
ASTI File No. 10411*

Dear Mr. Pennington:

A site investigation was completed on October 25, 2017 by ASTI Environmental (ASTI) to delineate wetland boundaries on the above-referenced property located along the east/northeast side of Gallagher Boulevard, south of Lisch Street, north of Strawberry Lake Road in Hamburg Township, Livingston County, Michigan (Property). One wetland likely regulated by the Michigan Department of Environmental Quality (DEQ) was found on the Property (Figure 1 – *Approximate Wetland Boundaries*).

SUPPORTING DATA

The United States Geological Survey (USGS) Hamburg, Michigan 7.5' Quadrangle Map, the USDA Web Soil Survey (WSS), the National Wetland Inventory Map (NWI), the DEQ Wetlands Map Viewer web site, and digital aerial photographs were all used to support the wetland delineation and subsequent regulatory status determination. The DEQ map indicated the presence of wetland in the southern portion of the Property. No other data indicated the presence of wetland on the Property. All reviewed data showed Strawberry Lake to the east of the Property.

The WSS indicates the Property is entirely comprised of the soil complex of Carlisle muck (0-2% slopes), which is on the list *Hydric Soils of Michigan*.

FINDINGS

ASTI investigated the Property for the presence of lakes, ponds, wetlands, and watercourses. This work is based on MCL 324 Part 301, Inland Lakes and Streams and Part 303, Wetlands Protection. The delineation protocol used by ASTI for this delineation is based on the US Army Corps of Engineers' *Wetland Delineation Manual*, 1987, the

Regional Supplement to the Corps of Engineer Wetland Delineation Manual: Northcentral/Northeast Region, and related guidance/documents, as appropriate. Wetland vegetation, hydrology, and soils were used to locate the wetland boundaries.

One wetland was found on the Property.

Wetland A

Wetland A is a scrub/shrub wetland approximately 0.20 acres in size on-site located in the southern portion of the Property (Figure 1). Vegetation observed within Wetland A was dominated by gray dogwood (*Cornus racemosa*), elderberry (*Sambucus nigra*), sand bar willow (*Salix interior*), swamp currant (*Ribes americanum*), sensitive fern (*Onoclea sensibilis*), and lake bank sedge (*Carex lacustris*). Soils within Wetland A were mucky and are considered hydric because the hydric soil criteria for a histosol was observed. Indicators of wetland hydrology observed within Wetland A included water stained leaves and saturated soils.

Dominant vegetation observed within the upland adjacent to Wetland A included Kentucky blue grass (*Poa pratensis*), white oak (*Quercus alba*), and blue spruce (*Picea pungens*). Soils in the adjacent upland were comprised of sandy loams and did not exhibit hydric soils characteristics; no indicators of wetland hydrology were observed.

It is ASTI's opinion that Wetland A is regulated by the DEQ under Part 303 because it is directly connected to Strawberry Lake, which is a regulated inland lake under Part 301.

Wetland Flagging

Wetland boundaries were marked in the field with day-glo pink and black striped flagging and numbered as follows:

Wetland A = A-1 through A-10

A professional survey should be conducted to determine the exact location of the wetland flagging and exact acreage of the on-site wetland.

SUMMARY

Based upon the data, criteria, and evidence noted above, it is ASTI's professional opinion the Property includes one wetland (Wetland A) regulated by the DEQ. However, the DEQ has the final authority on the extent of regulated wetlands, lakes, and streams in the State of Michigan.

Attached are Figure 1, which shows the locations of wetland flagging within the Property, and completed US Army Corps of Engineers (ACOE) Wetland Data Forms.

Thank you for the opportunity to assist you with this project. Please let us know if we can be of any further assistance in moving your project forward.

Cordially,

ASTI ENVIRONMENTAL



Kyle Hottinger
Wetland Ecologist



Dianne Martin
Director, Resource Assessment & Mgmt.
Professional Wetland Scientist #1313

Attachments: Figure 1 – Approximate Wetland Boundaries
Completed ACOE Wetland Data Forms



Wetland Delineation
Completed October 25, 2017

Figure 1 - Approximate Wetland Boundaries
533 Gallagher Blvd.
For: Denny Pennington
ASTI File No. 10411

EXHIBIT E: OCTOBER 2017 EGLE
EMAIL

EXHIBIT B

From: Pierce, Jeff (DEQ) [mailto:PierceJ2@michigan.gov]
Sent: Tuesday, October 24, 2017 4:22 PM
To: Amy Steffens <asteffens@HAMBURG.MI.US>
Subject: RE: 5313 Gallagher, Pennington property

Hi Amy,

I originally met with Mr. Pennington to discuss his proposed project back in August. At the time, Mr. Pennington was proposing to place a portion of the structure within the wetland. I gave him a map showing the approximate wetland boundaries and recommended that he consider alternative locations or layouts in order to avoid direct impacts to the wetland.

Mr. Pennington recently contacted me about your requirements for an exact wetland boundary determination. I pointed him towards the DEQ's Wetland Identification Program or hiring a private wetland consultant.

I think it would be a good idea to require an engineered drainage plan. The proposed structure is not very big and likely shouldn't result in a significant increase in runoff input into the wetland. The wetland appears to be fed primarily from groundwater flow to the lake. The drainage plan might at least get him to consider some of these factors in planning.

Jeff Pierce
Water Resources Division, DEQ
Lansing District Office
525 W. Allegan Street
P.O. Box 30242
Lansing, MI 48909

Phone: 517-416-4297 FAX: 517-241-3571

From: Amy Steffens [mailto:asteffens@HAMBURG.MI.US]
Sent: Thursday, October 19, 2017 9:27 AM
To: Pierce, Jeff (DEQ) <PierceJ2@michigan.gov>
Subject: 5313 Gallagher, Pennington property

Jeff,

Mr. Pennington has filed for a variance from the township zoning ordinance requirement that structures be placed a minimum of 50 feet from the edge of any regulated wetland. His proposal is to be 8 feet from the wetland boundary (site plan and aerial with contours attached).

Even with the topography of the site at the location he would like to build the garage, I am still concerned about runoff into the wetlands. If the Zoning Board of Appeals approves this project, I believe that we should make submission of an engineered drainage plan a condition of approval. I would like your thoughts on the project's impact to the wetlands and if the township should request anything above and beyond a drainage plan.

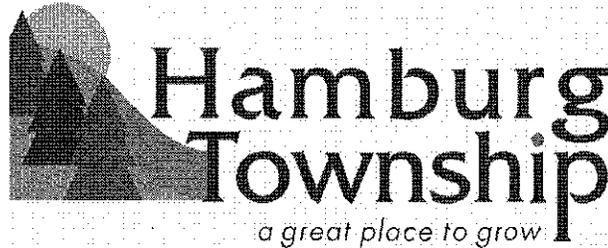
Thank you. I appreciate your help.

Amy Steffens, AICP
Planning and Zoning Director
Hamburg Township Planning and Zoning Department
10405 Merrill Road

P.O. Box 157
Hamburg, MI 48139
(810) 231-1000 x222
(Personal office hours: 8 am to 3 pm, M-W-F)

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, November 8, 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: Amy Steffens, Planning & Zoning Administrator & Mike Beck, Zoning Coordinator

4. Correspondence: None

5. 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.

6. Variance requests:

ZBA 2017-021

Owner: Dennis J. Pennington Living Trust

Location: 5313 Gallagher Boulevard

Parcel ID: TID 15-27-301-201

Request: Variance application to permit the construction of a 24-foot by 35-foot detached accessory structure with an eight-foot setback from the boundary or edge of a regulated wetland (50-foot setback from the boundary or edge of any regulated wetland required, Section 9.9.3.B.).

Mr. Pennington stated that he is requesting a variance to build an accessory building. There is actually enough room on the property to meet the 50 foot setback. However, there is also a requirement of the Homeowner's Association for a 60 foot setback from the center of the road, which means there is no other location on the property for the structure.

Mike Beck, Zoning Coordinator stated that the applicant is requesting a variance to construct a garage within the 50 foot natural features setback requirement. The homeowner made application to construct a garage in 2016, however the permit did expire. When he re-applied in 2017, the presence of the wetlands was noted. The Township Zoning Ordinance does allow for an administrative review to approve a different or reduced setback or eliminate the setback based on certain criteria which details the future protection of the natural features and/or mitigation of the natural features. He could submit an engineered drainage plan, he could construct a physical barrier to protect the wetlands, or record a wetlands easement to protect the wetlands into the future. Today we did receive the engineering plan from the applicant's engineering firm. The survey does indicate that the wetlands and the proposed site of the garage still exceeds the eight foot setback that he

has requested. It is the recommendation of the Planning & Zoning staff to have an administrative approval of the setback versus a variance. Planning & Zoning Administrator Steffens reiterated that the ordinance allows the Zoning Administrator or the body undertaking review to not require a variance but to allow for an administrative approval of a reduced setback. If it is the Board's intention to approve this project in some way, we would suggest that you do it as an administrative step and not as a variance approval with at least one of the conditions as outlined.

Chairperson Priebe stated that the Board does not have any jurisdiction or any authority over civil matters, deed restrictions, etc. We are only looking at the Zoning Ordinance requirements.

Chairperson Priebe opened the public hearing.

Mr. Craig Haitz, President of the Strawberry Court Homeowner's Association, stated that he is representing both the their Homeowner's Association as well as the neighboring Homeowner's Association, Strawberry Estates. In reviewing the Standards of Review, they are in agreement 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. Addressing the second point that such a variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity, he would like to point out that the applicant currently has a 720 square foot garage, and other parcels within 300 feet of this property currently have 604 square foot garages. That is 19% larger. If this garage is approved, they would have a 264% larger garage at 1,595 square feet. His last point is to the review standard that "the requested variance is the minimum necessary to permit reasonable use of the land". The variance would establish a second garage on the parcel. The property is developed with a single family home and garage. Reasonable use of the property has already been established. He would hope that the Board would simply apply the requirements and protect the wetlands.

Mr. Gary Parsons of 5295 Gallagher stated the ordinance requires a 50 foot setback from the regulated wetland for the purpose of protecting the wetlands. We are calling this an accessory structure, but it is a garage, and it is not just a question of engineered drainage for rainwater or run-off. Garages have gasoline, oil, vehicles, etc. He does not feel that waiving the setback is appropriate to protect the wetlands. An 8 foot setback is significant. You have to ask, if the Board approves this, is there anything that you won't approve. He opposes the request.

Gary and Ruth Ann Fett of 5306 Gallagher were present. Mrs. Fett stated that they live across the street from the proposed structure. The proposed area is very low and they are concerned about what kind of fill would be required to build the structure. Mr. Fett stated that they are not only concerned about the wetland, but also the lake. He further stated that years ago, they built a sunroom off the back of their house, and like many of the neighbors, they are able to see the lake. This is one of the reasons they live there and contributes to the value of their home. If this structure is built, it will take away their view of the lake. Mrs. Fett stated that a study should be done. If there is going to be run-off, it could flood their access. Mr. Fett stated that they are also concerned about what the building would be used for, what kind of equipment would be in it, etc. and the potential impact that could have.

Mr. Haitz stated that he would like to officially put on record that the HOA Board is opposed to the structure being built.

Mr. Frank Swanson of 5197 Gallagher stated that they have lived in their home since 1980 and have served on the Board many times. They have tried to maintain the original rules for their properties and whole neighborhood. Things should be approved by the Association. If they have to go to court to settle this, it will cost a lot of money. It is hard to believe that somebody who has checked on what the rules are would make such a request and make so many enemies before they move in. They would ask that this Board not allow this to happen.

Ms. Kamille Karlson of 5221 Gallagher asked if this is approved, would it set a precedent for the whole neighborhood.

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

Chairperson Priebe stated that the ZBA looks at each request individually. They look at the practical difficulty, and financial impact is not a consideration. They look at the size, shape and configuration of the property in making a determination. Again, they do not consider deed restrictions.

Member Bohn stated that the letter from the MDEQ appears to be in response to a request for a full wetlands delineation. It concludes that a permit is required, however the State law does not require a setback. They regulate the feature. Mr. Pennington stated that the MDEQ indicated that a permit would be required because the way it was laid out, it would go into the wetland, which he was not aware of. He reduced the size of the structure. Member Bohn stated that what he understands is that the MDEQ has accepted ASTI's survey. He further asked if the 8 feet is measured from the corner of the proposed structure. Steffens indicated that it is. Member Bohn asked the reason why they would not move the structure closer to the residence but keeping the 60 foot HOA requirement. Mr. Pennington stated that he could do that, but not meet the 50 feet and there is a hill there as well as a driveway. Discussion was held on the topography of the site.

The question was asked about the administrative review process. Zoning Coordinator Beck stated that one of the differences between the administrative approval and a variance is that administrative approval would not run with the land but rather be limited to the current structure. Planning & Zoning Administrator Steffens stated that Section 9.9.3 requires a 50-foot setback from the boundary or edge of a regulated wetland. However, the Zoning Administrator or body undertaking plan review may reduce or eliminate the setback upon review of a request which details the future protection of the natural feature(s) and or mitigation of the natural feature(s). The letter from the MDEQ and the letter from ASTI indicates that these are regulated wetlands. The MDEQ does not have a setback requirement. They will issue permits for encroachments into a wetlands if the proper engineering is done. It was stated that the proposal does not encroach the wetlands, but rather 8 feet from the wetlands. Member Bohn stated that the thing that protects the wetland is a buffer, which in the case, is the engineered drainage plan. Steffens stated that engineered grading and drainage plan would only be required with the issuance of a land use permit. We are concerned about drainage going into the wetlands, so the plan is going to have to show us that all storm water run-off is managed on site and the wetlands are not being impacted negatively by run-off of the additional impervious area. Member Bohn asked if the plan would also show where the gutters are directed to, etc. Steffans stated that it would. One of the things the inspector looks at during final inspection is what direction the downspouts are facing, and must be into the internal part of the lot. The question was asked about the pitch of the roof. Mt. Pennington stated that it would be 8/12.

Discussion was held on the adjacent park. Mr. Pennington stated that there is a relatively thick vegetation area between his property and the park. Discussion was held on the use of the structure. Mr. Pennington stated that the storage is not for vehicles. He stated that people store their boats in the driveways, around their house, etc. He would prefer to have his blue-tarped boat within a structure as well as kayaks and other storage. It is more harmonious to the neighborhood, and what he is proposing is a structure that ties into his house.

Zoning Coordinator Beck reviewed the Boards options.

The question was asked if there would be any fill required. Mr. Pennington stated that the building would not require any fill. It may require cutting into the hill if he moves it to the left. The question was asked how much more to the left could the building be moved reasonably, understanding that you would have to cut into the hill. Mr. Pennington stated that it could be moved over approximately two feet, but he would still like to request the eight foot setback.

Further clarification was made for the administrative review of the setback versus a variance. The replacement for the setback is the drainage plan. The setback could be limited to something less than 50 feet.

Member Neilson asked the type of driveway would be used for the building. Mr. Pennington stated that he intends to leave it the way it is, which is grass. The building is for storage and will not be something that will be in and out all the time. The question was asked if it is going to simply be storage, why couldn't the building be put behind the house. Discussion was held on the setbacks, wetlands and other constraints.

Motion by Bohn, supported by Hollenbeck

Motion to approve variance application ZBA 17-021 at 5313 Gallagher Boulevard to permit construction of a 24-foot by 35-foot detached accessory structure. The garage will be not less than 8 feet from the designated wetland (50-foot setback is required, Section 9.9.3 (B)(1)). The variance meets the variance standards numbers one through seven of Section 6.5 of the Township Ordinance and a "Practical Difficulty" exists partially as a result of State regulated wetlands and the existing structures and the topography of the site as discussed at tonight's hearing and as presented in the staff report. The wetlands have been delineated as per the ASTI report dated November 1, 2017 and attachments to the report including the survey dated November 7, 2017. In addition, the applicant must provide a storm water drainage and grading plan acceptable to staff prior to issuance of a land use permit. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

The question was asked if the three conditions as outlined in the staff report would also be required. Beck stated that it would be required only as part of the motion. It was stated that an engineered drainage plan is required per the motion.

Bohn revised the motion, Hollenbeck supported

to include: if necessary and determined by staff, in their reasonable discretion, to construct a physical barrier along the State wetland boundary to preserve the wetland from lawn equipment or any other trampling of that area, preferably a natural, vegetation barrier such as an earthen berm as opposed to a man-made structure that requires maintenance as needed to deflect drainage from the structure

Voice vote: Ayes: 3 Nays: 2 Absent: 0 MOTION CARRIED

7. New/Old Business:

1. Approve October 11, 2017 meeting minutes and memorialization of findings for ZBA 17- 020.

Motion by Watson, supported by Neilson

To approve the October 11, 2017 minutes and memorialization of Findings for ZBA 17-020

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

Planning & Zoning Administrator Steffens stated that tomorrow at the Township Board meeting, the Board will be discussing the Zoning text amendment dealing with the 50% rule as well as the Waterfront Residential district text amendment for lots less than 60 feet to have a reduced minimum setback. These will be discussed at their 2:30 p.m. meeting.

Planning & Zoning Administrator Steffens stated that at this point, we have no cases for the December meeting.

Member Bohn stated that the language dealing with a reduced setback and future protection of the wetlands is a good tool to have. Steffens agreed and stated that they still like the ZBA members look at it because it is

problematic and there are a lot of opinions on the matter. It is up to the Board to put it back to say an administrative review is appropriate.

Further discussion was held on the approved variance. Discussion was held on the view of the lake from surrounding neighbors.

Planning & Zoning Administrator Steffens stated that in September, one of the cases heard was for 10260 Langly Drive. Zoning Coordinator Beck stated that the case involved major reconstruction of more than 50% and adding a small addition to expand the structure 7.8 feet from the south property line. As of today, they have taken the structure down to its foundation. The question it raises is what was the ZBA's intent in approving this. It was stated that the intent was to simply "square off" the building, not tear down the entire structure. Steffens stated that what was submitted was a plan showing the existing walls and the new walls. It was an addition, and they were going up as well. It appears that they are using the same foundation and footprint. The question is, if the Board knew that they would be tearing down the structure, would you have approved the non-conforming setbacks.

The question was asked how they received a demo permit. Steffens stated they did not. The County will not issue a permit until we do, and we require shut-off notices from the utility companies.

Discussion was held on a required explanation from the applicant. It is different if you find something unanticipated, but another to tear down the entire structure. Steffens asked if the footprint has not changed, are we good to proceed. We will follow up with the Livingston County Building Department tomorrow to see what was issued. They filed for their land use permit based on their variance approval and then came back later to show us they were raising the house. They did not tell us they were taking it down to the foundation. Discussion was held on the type of foundation. It was stated that it is a crawl space. Steffens stated that we will follow up with the Building Department and go out and do an inspection.

The question was asked if our staff receives any training on wetland identification. Steffens stated that we do not. We rely on the applicant's engineering work to tell us whether or not there are wetlands and if they are regulated by the DEQ. Beck stated that we rely on the DEQ's wetlands map and data that they prepare as well. He described the wetland identification process. Further discussion was held on wetlands.

Discussion was held on the opposition from the neighbors regarding the Gallagher appeal. The Board is bound by seven questions of the findings of fact. If you find that it meets the findings of fact and a practical difficulty exists that they could not meet the standards, then you must vote yes. People are very protective of their property, particularly on the lakefront lots, and personality conflicts do arise. It was stated that if the concern is the wetlands, there are reasonable rules the homeowner's association can pass as well.

8. Adjournment:

Motion by Bohn, supported by Neilson

To adjourn the meeting

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

The meeting was adjourned at 8:15 p.m.

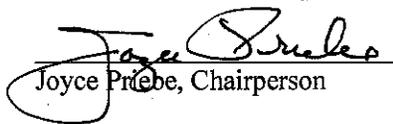
Respectfully submitted,

Julie C. Durkin

Recording Secretary

The minutes were approved

As presented/Corrected: 3-14-18


Joyce Priebe, Chairperson

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
Patricia Hughes

**Hamburg Township
Zoning Board of Appeals Minutes
Meeting Held Remotely due to COVID-19
Wednesday, May 13, 2020
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: Priebe, Watson, Dolan, Auxier, Rill

Absent: None

Also Present: Amy Steffens, Planning & Zoning Administrator & Erik Perdonik

4. Correspondence: None

5. Approval of Agenda:

Motion by Auxier, supported by Rill

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 20-0002

Owner: Zalewski Construction Co.

Location: Vacant on Rush Lake Road, west of 3267 Rush Lake Road Pinckney MI 48169

Parcel ID: 15-17-302-093

Request: Variance application to allow for the construction of a two-story, 1,872 square foot dwelling with an 864-square foot walk-out basement, an attached 420square foot garage, and an 80-square foot elevated deck on the dwelling's north façade. The dwelling will have a nine-foot setback from a regulated wetland and the elevated deck will have a two-foot setback from a regulated wetland (50-foot setback from a regulated wetland required, Section 9.9.3.B).

Larry Zalewski, property owner, stated that he has submitted his grading plan and new plan with all of the benchmarks. As noted, the basement will be 1 foot higher than the wetlands.

Amy Steffens, Planning & Zoning Administrator, stated that this project was tabled at the March 11, 2020 ZBA meeting after the public hearing was held. At that time, the applicant was requested to submit a grading plan. On April 21, 2020, the applicant submitted a grading plan. Staff forwarded the grading plan to EGLE for comment regarding potential impact to the wetlands. They have responded indicating that it appears that the grading and house construction will be outside of the wetland and no permit would be required. The applicant is required to put up construction fencing around the wetland prior to any work. Staff continues to recommend approval of this request with wetlands protections as deemed appropriate by the ZBA. She discussed the options for the wetlands protection. The project has not changed since it came before the Board on March 11th. The dwelling will have a nine-foot setback from a regulated wetland and the elevated deck will have a two-foot setback from a regulated wetland.

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

Member Auxier questioned the two-foot strip between the wetlands and the lot line. He asked if it would be raised up to meet the grade of the lot. Mr. Zalewski stated that the engineer included paver stones as a barrier. He could raise it up, but it would cause that area to be almost flat. Steffens stated that she would like to see a small landscape type fence that would actually barricade the yard from the wetlands.

Member Dolan stated that he would be comfortable with approving the variance request with the requirement that a physical barrier acceptable to the Zoning Administrator be installed. Discussion was held on a physical barrier as well as the pavers. Discussion was held on the different options.

Motion by Auxier, supported by Watson

To approve variance application ZBA 20-0002 at 15-17-302-093 to allow for the construction of a two-story, 1,872 square foot dwelling with an 864-square foot walk-out basement, an attached 420-square foot garage, and an 80-square foot elevated deck on the dwelling's north façade. The dwelling will have a nine-foot setback from a regulated wetland and the elevated deck will have a two-foot setback from a regulated wetland (50-foot setback from a regulated wetland required, Section 9.9.3.B.).

Variance approval is granted based on the following conditions: the applicant shall show the limits of grading on the plot plan at the time of land use permit issuance and construct a raised physical barrier that is acceptable to the Zoning Administrator along the wetlands to preserve the wetland from further encroachment by lawn equipment or any other trampling of the area.

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.

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

b) ZBA 20-0003

Owner: Leonard and Melissa Morgan

Location: 2946 Indian Trail Dr. Pinckney MI 48169

Parcel ID: 15-32-402-015

Request: Variance application to allow for the construction of a two-story, 1,272 square foot dwelling with a 1,269 square foot second story. The dwelling will have a 21.7-foot north front yard setback (25-foot front yard setback required, Section 7.6.1.), and a 2.9-foot east side yard setback, resulting in an aggregate side yard setback of 7.9 feet (15-foot aggregate side yard setback required, Section 7.6.1. fn. 4), and a 44-foot south rear yard setback from the ordinary high water mark of Base Line Lake (50-foot setback from the OHM required, Section 7.6.1. fn. 3), and a total lot coverage of 56 percent, (Maximum 50 percent lot coverage allowed, Section 7.6.1. fn. 7).

Chairperson Priebe stated that this item had been previously tabled and will be postponed again until next month to allow the applicant additional time.

c) ZBA 20-0004

Owner: Bradley and Patricia Zalewski

Location: 8491 Baudine Rd., Pinckney MI 48169

Parcel ID: 15-17-301-070

Request: Variance application to allow for the construction of a 423-square foot addition to the south façade of an existing dwelling. The addition will have a 20-foot east rear yard setback (30-foot rear yard setback required, Section 7.6.1.) and a 25-foot setback from the ordinary high water mark of the canal to the east (50-foot setback from the ordinary high water mark required, Section 7.6.1.fn3).

Mr. Zalewski, applicant, stated that they were before the board last July. Since that time they have scaled down the addition. Today they are simply asking for a variance from the canal to the house.

Erik Perdonik of the Zoning Department stated that The subject site is a 19,138-square foot parcel that fronts on Baudine Road to the west, and Rush Lake canal to the east. Single-family dwellings are located to the north, east, and west of the site. The existing dwelling is one-story, 1,632 square feet, with a detached 270-square foot garage. The subject site was granted a variance at the July 10, 2019 Zoning Board of Appeals meeting to construct a 736-square foot addition to the south façade of the existing dwelling. This addition was never constructed, but it was approved to be constructed with an 11-foot west front yard setback along Baudine Road where a 25-foot front yard setback is required, and a 35-foot setback from the OHWM of Rush Lake where a 50-foot setback from the OHWM required. The applicants have since revised their plans for the addition, and these new plans also require a variance, which is why the applicant is before the ZBA again this evening. A significant portion of the property is within the Federal Emergency Management Agency's 100 year flood plain. Therefore, at the time of land use permit issuance, an elevation certificate will need to be submitted.

Perdonik discussed the Standards of Review. He stated that unlike most properties in the WFR District, the subject site is bounded by water along its south and east sides, which results in a 50-foot setback from the OHWM being required on both of those sides. In addition, all properties zoned WFR require that the primary structure have a 25-foot front yard setback and a 30-foot rear yard setback. These setback requirements are intended to provide adequate space, open vistas, and privacy throughout neighborhoods and between structures on smaller residential lots. However, on the subject site, these setback requirements, taken together with a relatively shallow average lot depth of 87.61 feet, result in an exceptionally constrained buildable area, just eight feet in approximate width, making the development of a compliant addition to the existing single-family dwelling practically difficult. In fact, the lot and existing dwelling are considered nonconforming to the Zoning Ordinance. The variance preserves a substantial property right possessed by other property in the same zone and vicinity; in this case, the right to construct a complaint addition to a single-family home in a district in which it is customarily permitted. In fact, no addition of the proposed size would comply with the Zoning Ordinance, regardless of how it was situated, and the applicants have already chosen to reduce the size of the proposed addition by 313 square feet since a variance was approved for a larger 736-square foot addition at the ZBA's July 10, 2019 meeting. In addition, the applicants are also now proposing to comply with the required 25-foot front yard setback, whereas their previously approved plans encroached 14 feet into that setback. Most other properties in the same zone and vicinity are only constrained by one 50-foot OHWM setback, rather than two, and this lot has a relatively shallow average depth of 87.61 feet. The existing dwelling has a 20-foot rear yard setback and a 25-foot setback from the OHWM to the east. Because the proposed addition would also have a 20-foot rear yard setback and a 25-foot setback from the OHWM to the east, significant impairment of visibility is not foreseeable such that the proposed addition would be materially detrimental to the public welfare or materially injurious to the property or improvements in the WFR District, especially considering that the proposed addition, like the existing dwelling, would be 13 feet in height. The subject site is within the West Hamburg/Rush Lake planning area of the Master Plan, which envisions medium-density residential development at one unit per acre in the developed areas surrounding Rush Lake. Because the variance request does not propose an increase in density beyond the one dwelling, granting the request will not adversely affect the purpose or objectives of the Master Plan. The condition or situation of the subject site for which the variance is sought is not of so general or recurrent a nature in light of the presence of water along the south

and east sides of the site, the two 50-foot setbacks from the OHWM that result from the presence of water on two sides, and the relatively shallow average lot depth of 87.61 feet. The use of the site is presently single-family residential, which is a use permitted by right in the WFR District in which it is located, and granting a variance to permit the construction of an addition to the existing single-family dwelling will not change the present use. Given the exceptionally constrained size of the buildable area on the lot as well as the relatively shallow average lot depth, practical difficulty exists on the subject site with regard to constructing a compliant dwelling and any customary additions thereto on the lot. The proposed 423-square foot addition is a reasonable use of the land considering its WFR zoning, and further reducing the size of the addition may be unnecessarily burdensome. Once again, the site has an exceptionally constrained buildable area at just eight feet in approximate width in light of the setback requirements and lot depth.

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

Chairperson Priebe stated that she is pleased to see that the size has been reduced and the request is more conforming than the previous request.

Member Auxier stated that he feels that there is a practical difficulty due to the narrowness of the lot.

Motion by Watson, supported by Auxier

Motion to approve variance application ZBA 20-004 at 8491 Baudine Road to permit the construction of a 423-square foot addition to the south facade of the existing dwelling. The addition will have a 20-foot east yard setback (30-foot rear yard setback required, Section 7.6.1), and a 25-foot setback from the OHWM of the Rush Lake canal to the east (50-foot setback from the OHWM required, Section 7.6.1.fn3).

Variance approval is granted based on the following conditions: the applicant shall show the limits of grading on the site plan at the time of Land Use Permit issuance and Prior to the issuance of a Land Use Permit, the applicants shall provide an Elevation Certificate demonstrating that the floors of the existing dwelling and proposed addition are one (1) foot above base flood elevation. The variance meets variance standards one (1) through seven (7) of Section 6.5 of the Hamburg Township Zoning Ordinance and a practical difficulty exists on the subject site when strict compliance with the Zoning Ordinance standards is applied, as discussed at the meeting this evening and as presented in this staff report. The Board directs Staff to prepare a memorialization of the ZBA's findings for the request.

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

8. New/Old business

- a) Approval of March 11, 2020 ZBA Minutes

Motion by Auxier, supported by Rill

To approve the minutes of the March 11, 2020 meeting minutes as written

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

9. Adjournment:

Motion by Watson, supported by Dolan

To adjourn the meeting

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

The meeting was adjourned at 7:44 p.m.

Respectfully submitted,

Julie Durkin, Recording Secretary

The minutes were approved as presented/corrected: _____

Chairperson Priebe



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

**ZONING BOARD OF APPEALS
MEMORIALIZATION OF FINDINGS**

May 13, 2020

Approval of Variance 20-002

PROJECT SITE: Vacant on Rush Lake Road
TID (15-17-302-093)
OWNER: Zalewski Construction Co.

PART I – PROJECT DESCRIPTION

Variance application to allow for the construction of a two-story, 1,872 square foot dwelling with an 864-square foot walk-out basement, an attached 420-square foot garage, and an 80-square foot elevated deck on the dwelling's north façade. The dwelling will have a nine-foot setback from a regulated wetland and the elevated deck will have a two-foot setback from a regulated wetland (50-foot setback from a regulated wetland required, Section 9.9.3.B).

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.**

The presence of this regulated wetland encroachment onto the parcel is not a circumstance that generally is found on other properties in the same zone or district. The location of the wetland on this property adds practical difficulty to siting a dwelling within all required setbacks.

- 2. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity. The possibility of increased financial return shall not be deemed sufficient to warrant a variance.**

The location of the wetland on this property adds practical difficulty to siting a dwelling within all required setbacks.

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.

A submitted grading plan, reviewed by EGLE, shows that there will be minimal impact to the wetlands or surrounding properties. A physical barrier between the upland and the wetlands could protect the wetlands setback from further encroachment.

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

The intent of the 50-foot setback is to protect the environmental features that serve important ecological purposes. Wetlands protect against flooding, provide wildlife habitat, and naturally filter contaminants from water. However, EGLE has no objection to the project, and constructing a physical barrier could prevent trampling or and further encroachment into the wetlands setback area.

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.

Because of the presence of the wetland encroachment on the property, the request for the variance 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.

The site is zoned single-family residential and the proposed variance would not change the use.

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

The site is zoned for single-family use. It would be difficult to construct a complaint dwelling at this location given the presence of the wetlands on the site. Constructing a physical barrier between the upland and the wetlands could help minimize further encroachment into the required setback and protect the wetlands from inadvertent trampling.

Approved by the Hamburg Township Zoning Board of Appeal at a regular meeting on May 13, 2020 by the following vote:

AYES:	BOARD MEMBERS:	Priebe, Watson, Rill, Dolan, Auxier
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NOES:	BOARD MEMBERS:	
ABSENT:	BOARD MEMBERS:	



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

**ZONING BOARD OF APPEALS
MEMORIALIZATION OF FINDINGS**

May 13, 2020

Approval of Variance 20-004

PROJECT SITE: 8491 Baudine Rd.
TID: 15-17-301-070

APPLICANT(S)/OWNER(S): Bradley & Patricia Zalewski

PART I – PROJECT DESCRIPTION

Variance application to permit the construction of a 423-square foot addition to the south façade of an existing dwelling. The addition will have a 20-foot east rear yard setback (30-foot rear yard setback required, Section 7.6.1), and a 25-foot setback from the ordinary high water mark (OHWM) of the canal to the east (50-foot setback from the OHWM required, Section 7.6.1.fn3).

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 Zoning Ordinance, including the applicable variance standards (Section 6.5.C) 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.**

Unlike most properties in the Waterfront Residential (WFR) District, the subject site is bounded by water along its south (Rush Lake) and east (canal) sides, which results in a 50-foot setback from the OHWM being required on both of those sides. In addition, all properties zoned WFR require that the primary structure have a 25-foot front yard setback and a 30-foot rear yard setback. These setback requirements are intended to provide adequate space, open vistas, and privacy throughout neighborhoods and between structures on smaller residential lots. However, on the subject site, these setback requirements, taken together with a relatively shallow average lot depth of

87.61 feet, result in an exceptionally constrained buildable area just eight (8) feet in approximate width, making the development of a compliant addition to the existing single-family dwelling practically difficult. In fact, the lot and existing dwelling are considered nonconforming to the Zoning Ordinance.

- 2. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity. The possibility of increased financial return shall not be deemed sufficient to warrant a variance.**

The variance preserves a substantial property right possessed by other property in the same zone and vicinity; in this case, the right to construct a compliant addition to a single-family home in a district in which it is customarily permitted, the WFR District. In fact, no addition of the proposed size would comply with the Zoning Ordinance, regardless of how it was situated, and the applicants have already chosen to reduce the size of the proposed addition by 313 square feet since a variance was approved for a larger 736-square foot addition at the Board's July 10, 2019 meeting. In addition, the applicants are also now proposing to comply with the required 25-foot front yard setback, whereas their previously approved plans encroached 14 feet into that setback. Most other properties in the same zone and vicinity are only constrained by one 50-foot OHWM setback, rather than two, and this lot has a relatively shallow average depth of 87.61 feet.

- 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 existing dwelling has a 20-foot rear yard setback and a 25-foot setback from the OHWM to the east. Because the proposed addition would also have a 20-foot rear yard setback and a 25-foot setback from the OHWM to the east, significant impairment of visibility is not foreseeable such that the proposed addition would be materially detrimental to the public welfare or materially injurious to the property or improvements in the WFR District, especially considering that the proposed addition, like the existing dwelling, would be 13 feet in height.

- 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 within the West Hamburg/Rush Lake planning area of the Master Plan, which envisions medium-density residential development (one unit per acre) in the developed areas surrounding Rush Lake. Because the variance request does not propose an increase in density beyond the one dwelling, granting the request will not adversely affect the purpose or objectives of the Master Plan.

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

The condition or situation of the subject site for which the variance is sought is not of so general or recurrent a nature in light of the presence of water along the south and east sides of the site, the two 50-foot setbacks from the OHWM that result from the presence of water on two sides, and the relatively shallow average lot depth of 87.61 feet.

6. Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district.

The use of the site is presently single-family residential, which is a use permitted by right in the WFR District in which it is located, and granting a variance to permit the construction of an addition to the existing single-family dwelling will not change the present use.

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

Given the exceptionally constrained size of the buildable area on the lot resulting from the two required 50-foot setbacks from the OHWM, as well as the relatively shallow average lot depth of 87.61 feet, practical difficulty exists on the subject site with regard to constructing a compliant dwelling and any customary additions thereto on the lot. The proposed 423-square foot addition is a reasonable use of the land considering its WFR zoning, and further reducing the size of the addition may be unnecessarily burdensome. Once again, the site has an exceptionally constrained buildable area at just eight (8) feet in approximate width in light of the setback requirements and lot depth.

Approved by the Hamburg Township Zoning Board of Appeals at a Regular Meeting on May 13, 2020, by the following vote:

AYES: 4	BOARD MEMBERS: Auxier, Priebe, Rill, Watson
NOES: 1	BOARD MEMBERS: Dolan
ABSENT: 0	BOARD MEMBERS: