

**Hamburg Township
Zoning Board of Appeals
Hamburg Township Board Room
Wednesday, March 11, 2020**

AGENDA

- 1. Call to order**
- 2. Pledge to the Flag**
- 3. Roll call of the Board**
- 4. Correspondence**
- 5. Approval of agenda**
- 6. Call to the public**
- 7. Variance requests**

ZBA 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).

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).

8. New/Old business

- a) Approval of January 8, 2020 minutes
- b) Memo of findings for ZBA 19-0019,

9. Adjournment



Zoning Board of Appeals Staff Report



AGENDA ITEM: 7a

TO: Zoning Board of Appeals (ZBA)

FROM: Amy Steffens, AICP

HEARING

DATE: March 11, 2020

SUBJECT: ZBA 20-002

PROJECT 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.).

SITE: Vacant on Rush Lake Road (west of 3267 Rush Lake Road)
TID: TID 15-17-302-093

APPLICANT/OWNER: Zalewski Construction Co.

PROJECT: 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.).

ZONING: WFR—Waterfront Residential

Project Description

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 (50-foot setback from a regulated wetland required, Section 9.9.3.B.).

Site History

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.

Wetlands Setback Standard

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 one of the following methods -.

1. 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.
2. 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.
3. 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.



example method #2 – physical wetland barrier

A wetlands delineation report has been submitted to Hamburg Township and forwarded to EGLE's Water Resources Division for comment. Exhibit B is an email exchange between the township and EGLE. 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.

Standards of Review

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

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

The 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 although it is the design preference of the applicant that necessitates the extreme wetlands setback request.

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

A substantial property right is not preserved based on granting a variance for a particular architectural design. The 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.

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

See the analysis under standard four below with respect to the function of wetlands.

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

Below is an excerpt from the Hamburg Township Master Plan, Natural Resources Management Strategies chapter (page 100):

Natural Feature Setback Standards: The Township may enact general zoning standards that apply to all zoning districts. This could be in the form of a natural features setback requirement. The Zoning Ordinance could require that natural buffers be maintained along natural features such as waterways and wetlands. To protect the stability of bluffs surrounding these natural features, the setback requirement should be increased as the slope of the land increases. Standards could also be established to require that this setback be maintained in a natural condition.

There is a strong basis for this type of requirement. Development surrounding water features, particularly wetlands, affects the function of the water feature. Development immediately adjacent to a water feature may have the effect of increasing the disturbance to this natural ecosystem and reduce the water feature's ability to perform these functions.

For example, wetlands are dependent upon an interaction between the wetland and the surrounding upland. In terms of hydrology, water enters a wetland from the surrounding upland area in a number of ways: overland flow, through the upper layers of the soil and through groundwater. The upland soil and vegetation surrounding the wetland all affect the amount, the means and the rate at which water enters the wetland following a storm or snow melt. Development of the surrounding upland will alter the relative balance between the overland (surface) flow and infiltration, resulting in a greater peak discharge to the wetland. In other instances, physical improvements such as structures, roads and storm sewer systems can intercept surface flow to the wetlands. These alterations to hydrology can result in much greater fluctuations in water levels between wet and dry seasons. The undisturbed soil between the site improvements and the wetlands acts as a buffer to try to maintain the natural upland/wetland interaction that existed prior to development.

In addition to the hydrologic function, waterways are natural open space corridors which serve as wildlife habitat. Animals move through suburban areas along remaining undeveloped natural corridors, such as the numerous drainage ways that cross the Township. Development immediately adjacent to these natural features has a detrimental impact on wildlife habitat by moving structures and disturbance further into these natural corridors and increase the constriction of development on these habitats. Protection of the area that lines natural features is also important to wildlife because this is the interface between the aquatic and terrestrial (upland) ecosystems system. This interface is important to animals such as land mammals that need water or birds that will perch on trees while hunting for fish.

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.

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

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

As discussed under standard number five, 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.

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

Recommendation

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

Denial Motion:

Motion to deny 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.). The variance does not meet variance standards one, three, four, 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 Recommendations:

The Zoning Board of Appeals should consider one or more of the following as a condition of project approval. Any conditions of approval should be enacted prior to the issuance of a land use permit:

1. An engineered drainage plan, prepared either by a civil engineer or registered landscape architect, for the property that would ensure runoff from the garage does not drain into the wetlands.

2. Construct a physical barrier along the wetlands to preserve the wetland from further encroachment by lawn equipment or any other trampling of the area.
3. 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.
4. The dwelling size shall be reduced to further reduce the encroachment into the wetlands setback.

Any setback from a wetland boundary granted at this hearing shall apply to the identified wetland boundaries, as determined in the wetlands identification process for this parcel.

Approval Motion:

Motion 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 (INSERT CONDITIONS FROM ABOVE). 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.

Exhibits

Exhibit A: Application materials, including wetlands delineation report

Exhibit B: email from EGLE

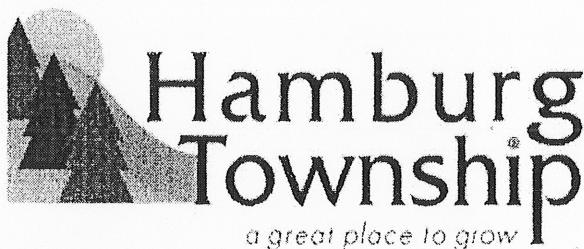
EXHIBIT A: APPLICATION MATERIALS

Docusign Envelope ID: 59760914-C005-48B0-A23E-36808FBF47FC

HAMBURG TOWNSHIP
Date 02/05/2020 10:59:11 AM
Ref ZBA2020-001
Receipt 1223308
ZBA Case Number 20-001

\$ 550

20-002



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: 2-5-2020

2. Tax ID #: 15- 17302093 - Subdivision: Herndons Rush Lake Estates No. 1 Lot No.: 570 & 1/2 571

3. Address of Subject Property: V/L Rush Lake Road

4. Property Owner: Zalewski Construction Co. Phone: (H) 313-600-0622

Email Address: larryzalewski1958@charter.net (W) (810) 636-2950 /cell 313-600-0622

Street: 7037 Dutch Road City Goodrich State MI

5. Appellant (If different than owner): _____ Phone: (H) _____

E-mail Address: _____ (W) _____

Street: _____ City _____ State _____

6. Year Property was Acquired: 2018 Zoning District: Residential Flood Plain No

7. Size of Lot: Front 60 Rear 60 Side 1 120 Side 2 120 Sq. Ft. 7,200

11. Dimensions of Existing Structure (s) 1st Floor N/A 2nd Floor _____ Garage _____

12. Dimensions of Proposed Structure (s) 1st Floor See Attached 2nd Floor _____ Garage _____

13. Present Use of Property: Vacant

14. Percentage of Existing Structure (s) to be demolished, if any N/A %

15. Has there been any past variances on this property? Yes No X

16. If so, state case # and resolution of variance application _____

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

wetland setback For House

For Elevated Deck

ZBA Case Number _____

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.

The topography of the lot.

- 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.

The home will be constructed in a similar fashion, footprint and proximity to wetlands as other existing homes in the district.

- 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.

The variance requested will not adversely affect the district and backs to the golf course.

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

The variance requested is not a zoning variance and shall be contained within the lot.

- 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.

This is a one time variance needed to meet a minimal wetland setback.

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

Does not apply.

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

The variance requested is a minimal variance needed.

9' From House to Wetland
2' From Elevated Deck

I hereby certify that I am the owner of the subject property or have been authorized to act on behalf of the owner(s) and that all of the statements and attachments are true and correct to the best of my knowledge and belief.

I acknowledge that approval of a variance only grants that which was presented to the ZBA.

I acknowledge that I have reviewed the Hamburg Township Zoning Ordinance, The ZBA Application and the ZBA Checklist and have submitted all of the required information.

I acknowledge that filing of this application grants access to the Township to conduct onsite investigation of the property in order to review this application.

I understand that the house or property must be marked with the street address clearly visible from the roadway.

I understand that there will be a public hearing on this item and that either the property owner or appellants shall be in attendance at that hearing.

I understand that a Land Use Permit is required prior to construction if a variance is granted.

I understand that any order of the ZBA permitting the erection alteration of a building will be void after six (6) months, unless a valid building permit is obtained and the project is started and proceeds to completion (See Sec. 6.8 of the Township Zoning Ordinance).

Same
Owner's Signature

Date

Appellant's Signature

Date

Jerry J. Le 1/28/20

From: "Dana Knox" <dknox@asti-env.com>
To: "larryzalewski1958@charter.net" <larryzalewski1958@charter.net>
Cc: "James Barnwell" <jimb@desineinc.com>
Date: Thursday September 12 2019 9:25:04AM

Hi Larry:

Attached please find the wetland delineation letter report for your Hamburg Twp. property. I also provided the GPS data to Jim. Let me know if you have any questions.

Dana Knox
Wetland Ecologist



Brighton, Detroit and Grand Rapids, Michigan

10448 Citation Drive., Suite 100

Brighton, MI 48116

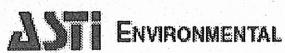
Ph: 810.225.2800

Fax: 810.225.3800

Cell: 734.474.0190

Web Site: www.asti-env.com

Email: dknox@asti-env.com



Investigation • Remediation
Compliance • Restoration

10448 Citation Drive, Suite 100
Brighton, MI 48116

Mailing Address:
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Brighton, MI 48116-2160

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Sent Via Email Only

September 12, 2019

Mr. Larry Zalewski
Zalewski Construction Co., Inc.
7037 Dutch Road
Goodrich, MI 48439

*RE: Wetland Delineation and Jurisdictional Assessment
Parcel ID 4715-17-302-093, Rush Lake Road Property
Hamburg Township, Livingston County, Michigan
ASTI File No. 11226*

Dear Mr. Zalewski:

On September 4, 2019 ASTI Environmental (ASTI) conducted a site investigation to delineate wetland boundaries on approximately 0.19 acres of property located along Rush Lake Road in Hamburg Township, Livingston County, Michigan (Property). One wetland likely regulated by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) was found on the Property (Figure 1 – *GPS-Surveyed Wetland Boundaries*). Wetland boundary as depicted on Figure 1, were located using a professional grade, hand-held Global Positioning System unit (GPS).

SUPPORTING DATA AND MAPPING

The United States Geological Survey (USGS) Pinckney, Michigan 7.5' Quadrangle Maps, the USDA Web Soil Survey (WSS), the National Wetland Inventory Map (NWI), EGLE Wetlands Map Viewer web site, and digital aerial photographs were all used to support the wetland delineation and subsequent regulatory status determination. The NWI and EGLE maps indicated the presence of wetland in the northern and eastern portions of the Property. The USGS depicted wetland in the western portion of the Property.

In addition, the WSS indicated the Property is comprised of the following soils Boyer-Oshtemo loamy sands 2 to 6 percent slopes, and Boyer-Oshtemo loamy sands 12 to 18 percent slopes. The soil series of Boyer-Oshtemo loamy sands 2 to 6 percent slopes is on the list *Hydric Soils of Michigan*.

FINDINGS

ASTI investigated the Property for the presence of any lakes, ponds, wetlands, and watercourses. This work is based on *MCL 324 Part 301 (Inland Lakes and Streams)* and *Part 303 (Wetland Protection)*.

It should be noted that some municipalities have local wetland ordinances and natural features setbacks that may apply to this property. In addition, in some circumstances the US Army Corps of Engineers (ACOE) may also have jurisdiction of wetlands or watercourses on your Property. If either is the case for your site, this information will also be noted in the wetland descriptions below.

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: Midwest Region*, and related guidance/documents, as appropriate. Wetland vegetation, hydrology, and soils were used to locate the wetland boundaries. One wetland area was found on the Property as discussed below.

Wetland A

Wetland A is an emergent wetland 0.03 acres in size located in the northern portion of the Property (see Figure 1). Dominant vegetation found within Wetland A included hop sedge (*Carex lupulina*), green ash (*Fraxinus pennsylvanica*), poison ivy (*Toxicodendron radicans*), path rush (*Juncus tenuis*), and fall panic grass (*Panicum dichotomiflorum*). Soils within Wetland A were comprised of a sandy loam and are considered hydric because the criteria for sandy redox, sandy loam mineral, and stripped matrix were met. Indicators of wetland hydrology observed within Wetland A included water-stained leaves, geomorphic position, and the FAC-Neutral test.

Dominant vegetation observed within the upland adjacent to Wetland A included fireweed (*Erechtites hieraciifolius*), poison ivy, green ash (*Fraxinus pennsylvanica*), summer grape (*Vitis aestivalis*), and multiflora rose (*Rosa multiflora*). Soils observed in the upland were comprised of sandy loams which are considered hydric because the criteria for depleted below dark surface and thick dark surface were met. However, no indicators of wetland hydrology were observed.

It is ASTI's opinion that Wetland A is regulated by the EGLE under Part 303, Wetland Protection, because it is located within 500-feet of Rush Lake, a regulated inland lake under Part 301. In addition, Hamburg Township requires a 50-foot setback from regulated wetlands per Article 9.9.3, Setback Standards within the Hamburg Township Zoning Ordinance, effective May 6, 2009.

On-site Wetland Flagging

Wetland boundaries were marked in the field with day-glow pink and black striped flagging, located with GPS, and numbered as A-1 through A-8.

Enclosed is a map of the Property showing the GPS-surveyed location of the wetland flagging (Figure 1).

SUMMARY

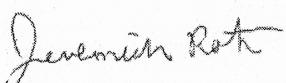
Based upon the data, criteria, and evidence noted above, it is ASTI's professional opinion that the Property includes one wetland (Wetland A) regulated by EGLE under the Natural Resources and Environmental Protection Act (1994 P.A. 451), Part 303 Wetland Protection. Additionally, Hamburg Township requires a 50-foot setback from regulated wetlands per the Hamburg Township Zoning Ordinance, Article 9.9.3, Setback Standards. EGLE has the final authority on the extent of regulated wetlands, lakes, and streams in the State of Michigan. Any proposed impact to the areas that ASTI has identified as regulated will require an EGLE permit.

Attached are Figure 1, which depicts the GPS surveyed locations of wetland flagging on the Property, and completed US Army Corps of Engineers (ACOE) Wetland Data Forms. Please note that the data sheet numbers match the data collection sampling points shown on Figure 1.

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.

Sincerely yours,

ASTI ENVIRONMENTAL

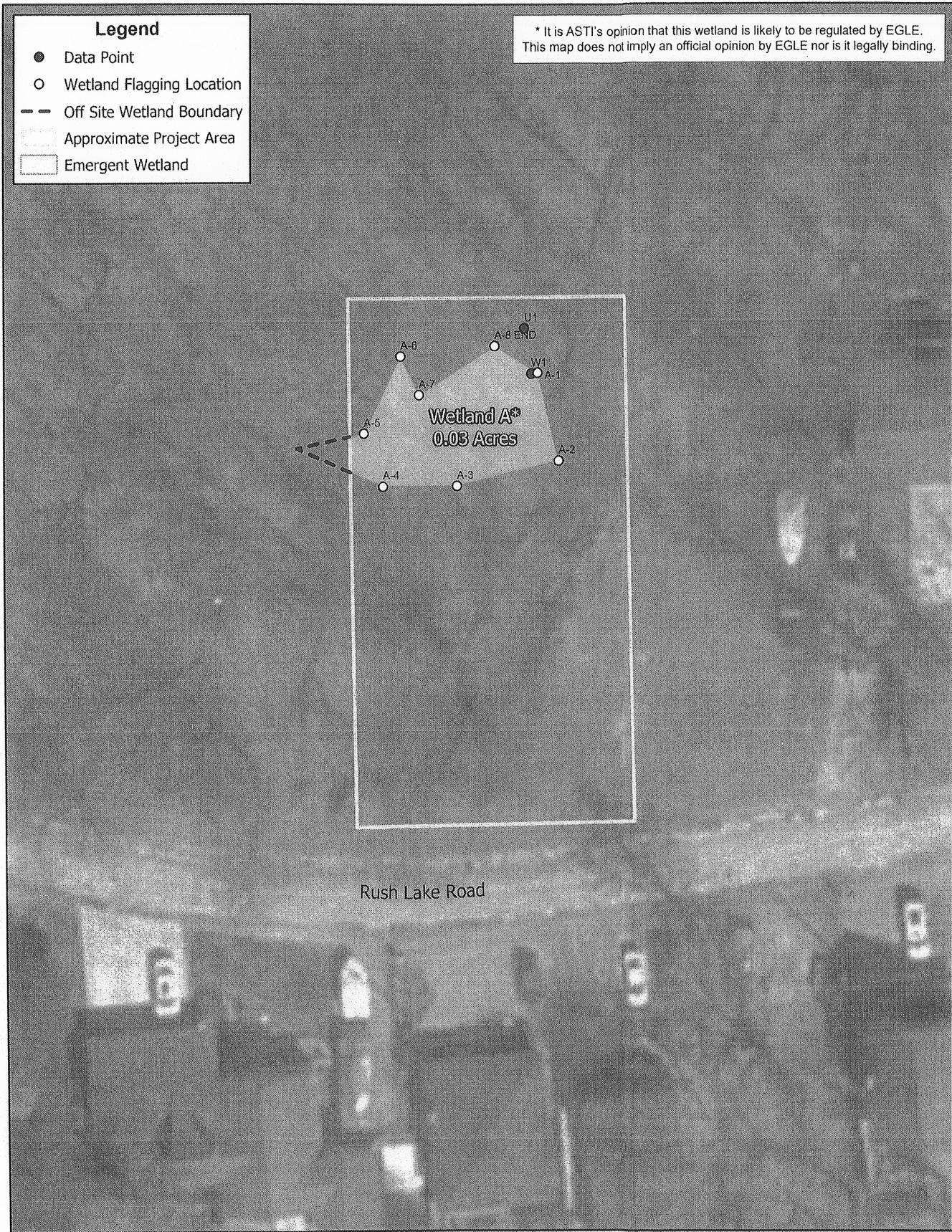


Jeremiah Roth
Wetland Ecologist



Dana R. Knox
Wetland Ecologist
Professional Wetland Scientist #213

Attachments: Figure 1 – GPS-Surveyed Wetland Boundaries
Completed ACOE Wetland Data Forms



Zalewski Property

Hamburg Township, MI

0 10 20 40
Feet



ASTI
ENVIRONMENTAL

Client: Zalewski Construction Co., Inc.
Created by: RMH, September 6, 2019, ASTI Project J1226
Imagery: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/
Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Figure 1 - GPS-Surveyed Wetland Boundaries

WETLAND DETERMINATION DATA FORM – Midwest Region

Project/Site: Rush Lake Road City/County: Livingston Co./Hamburg Twp. Sampling Date: 09/04/2019

Applicant/Owner: Zalewski Construction Company State: MI Sampling Point: W1

Investigator(s): Dana Knox and Jeremiah Roth ASTI Environmental Section, Township, Range: Section 17, 01N, 05E

Landform (hillside, terrace, etc.): Depression Local relief (concave, convex, none): concave

Slope (%): 0-2 Lat: 42.476171 Long: -83.883246 Datum: NAD 83

Soil Map Unit Name: Boyer-Oshtemo loamy sands 12 to 18 % slopes NWI classification: PFO1C

Are climatic / hydrologic conditions on the site typical for this time of year? Yes No (If no, explain in Remarks.)

Are Vegetation No, Soil No, or Hydrology No significantly disturbed? Are "Normal Circumstances" present? Yes X No _____

Are Vegetation _____, Soil _____, or Hydrology _____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present? Yes <u>X</u> No _____	Is the Sampled Area within a Wetland? Yes <u>X</u> No _____
Hydric Soil Present? Yes <u>X</u> No _____	
Wetland Hydrology Present? Yes <u>X</u> No _____	
Remarks:	

VEGETATION – Use scientific names of plants.

Tree Stratum		(Plot size: <u>30x30ft</u>)	Absolute % Cover	Dominant Species?	Indicator Status
1.	<u>None</u>				
2.					
3.					
4.					
5.					
					=Total Cover
Sapling/Shrub Stratum		(Plot size: <u>15x15ft</u>)			
1.	<u>None</u>				
2.					
3.					
4.					
5.					
					=Total Cover
Herb Stratum		(Plot size: <u>5x5ft</u>)			
1.	<u>Carex lupulina</u>	10	Yes	OBL	
2.	<u>Fraxinus pennsylvanica</u>	10	Yes	FACW	
3.	<u>Persicaria hydropiper</u>	5	No	OBL	
4.	<u>Juncus tenuis</u>	10	Yes	FAC	
5.	<u>Toxicodendron radicans</u>	15	Yes	FAC	
6.	<u>Panicum dichotomiflorum</u>	15	Yes	FACW	
7.	<u>Eupatorium perfoliatum</u>	5	No	OBL	
8.	<u>Digitaria sanguinalis</u>	5	No	FACU	
9.	<u>Taraxacum officinale</u>	5	No	FACU	
10.					
		80			=Total Cover
Woody Vine Stratum		(Plot size: <u>30x30ft</u>)			
1.	<u>None</u>				
2.					
					=Total Cover

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 5 (A)

Total Number of Dominant Species Across All Strata: 5 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 100.0% (A/B)

Prevalence Index worksheet:

Total % Cover of:	Multiply by:
OBL species <u>20</u>	x 1 = <u>20</u>
FACW species <u>25</u>	x 2 = <u>50</u>
FAC species <u>25</u>	x 3 = <u>75</u>
FACU species <u>10</u>	x 4 = <u>40</u>
UPL species <u>0</u>	x 5 = <u>0</u>
Column Totals: <u>80</u> (A)	<u>185</u> (B)

Prevalence Index = B/A = 2.31

Hydrophytic Vegetation Indicators:

- 1 - Rapid Test for Hydrophytic Vegetation
- X 2 - Dominance Test is >50%
- X 3 - Prevalence Index is ≤3.0¹
- 4 - Morphological Adaptations¹ (Provide supporting data in Remarks or on a separate sheet)

Problematic Hydrophytic Vegetation¹ (Explain)

¹Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Hydrophytic Vegetation Present? Yes X No

Remarks: (Include photo numbers here or on a separate sheet.)

SOIL

Sampling Point: W1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

¹Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

²Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

- Histosol (A1)
 - Histic Epipedon (A2)
 - Black Histic (A3)
 - Hydrogen Sulfide (A4)
 - Stratified Layers (A5)
 - 2 cm Muck (A10)
 - Depleted Below Dark Surface (A11)
 - Thick Dark Surface (A12)
 - Sandy Mucky Mineral (S1)
 - 5 cm Mucky Peat or Peat (S3)
 - Sandy Gleyed Matrix (S4)
 - X Sandy Redox (S5)
 - X Stripped Matrix (S6)
 - Dark Surface (S7)
 - Loamy Mucky Mineral (F1)
 - Loamy Gleyed Matrix (F2)
 - Depleted Matrix (F3)
 - Redox Dark Surface (F6)
 - Depleted Dark Surface (F7)
 - Redox Depressions (F8)

Indicators for Problematic Hydric Soils³:

- Coast Prairie Redox (A16)
 - Iron-Manganese Masses (F12)
 - Red Parent Material (F21)
 - Very Shallow Dark Surface (F22)
 - Other (Explain in Remarks)

³Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: None

Depth (inches): _____

Hydric Soil Present? Yes No

Yes No

Remarks:

This data form is revised from Midwest Regional Supplement Version 2.0 to include the NRCS Field Indicators of Hydric Soils, Version 7.0, 2015 Errata. (http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_051293.docx)

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required; check all that apply)

- | | |
|--|--|
| ____ Surface Water (A1) | X Water-Stained Leaves (B9) |
| ____ High Water Table (A2) | Aquatic Fauna (B13) |
| ____ Saturation (A3) | True Aquatic Plants (B14) |
| ____ Water Marks (B1) | Hydrogen Sulfide Odor (C1) |
| ____ Sediment Deposits (B2) | Oxidized Rhizospheres on Living Roots (C3) |
| ____ Drift Deposits (B3) | Presence of Reduced Iron (C4) |
| ____ Algal Mat or Crust (B4) | Recent Iron Reduction in Tilled Soils (C6) |
| ____ Iron Deposits (B5) | Thin Muck Surface (C7) |
| ____ Inundation Visible on Aerial Imagery (B7) | Gauge or Well Data (D9) |
| ____ Sparsely Vegetated Concave Surface (B8) | Other (Explain in Remarks) |

Secondary Indicators (minimum of two required)

- Surface Soil Cracks (B6)
 - Drainage Patterns (B10)
 - Dry-Season Water Table (C2)
 - Crayfish Burrows (C8)
 - Saturation Visible on Aerial Imagery (C9)
 - Stunted or Stressed Plants (D1)
 - Geomorphic Position (D2)
 - FAC-Neutral Test (D5)

Field Observations:

Surface Water Present? Yes No Depth (inches): _____

Water Table Present? Yes _____ No Depth (inches): _____

Saturation Present? Yes _____ No X Depth (inches): _____

(includes capillary fringe)

Wetland Hydrology Present? Yes X No

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:

WETLAND DETERMINATION DATA FORM – Midwest Region

Project/Site: Rush Lake Road City/County: Livingston Co./Hamburg Twp Sampling Date: 09/04/2019

Applicant/Owner: Zalewski Construction Company State: MI Sampling Point: U1

Investigator(s): Dana Knox and Jeremiah Roth ASTI Environmental Section, Township, Range: Section 17, 01N, 05E

Landform (hillside, terrace, etc.): terrace Local relief (concave, convex, none): convex

Slope (%): 0-2 Lat: 42.476203 Long: -83.883253 Datum: NAD 83

Soil Map Unit Name: Boyer-Oshtemo loamy sands 12 to 18 % slopes NWI classification: PFO1C

Are climatic / hydrologic conditions on the site typical for this time of year? Yes No _____ (If no, explain in Remarks.)

Are Vegetation No, Soil No, or Hydrology No significantly disturbed? Are "Normal Circumstances" present? Yes No _____

Are Vegetation _____, Soil _____, or Hydrology _____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present? Yes _____ No <input checked="" type="checkbox"/>	Is the Sampled Area within a Wetland? Yes _____ No <input checked="" type="checkbox"/>
Hydric Soil Present? Yes <input checked="" type="checkbox"/> No _____	
Wetland Hydrology Present? Yes _____ No <input checked="" type="checkbox"/>	
Remarks:	

VEGETATION – Use scientific names of plants.

Tree Stratum (Plot size: 30x30ft)	Absolute % Cover Dominant Species? Indicator Status	Dominance Test worksheet: Number of Dominant Species That Are OBL, FACW, or FAC: 2 (A) Total Number of Dominant Species Across All Strata: 5 (B) Percent of Dominant Species That Are OBL, FACW, or FAC: 40.0% (A/B)				
1. <u>None</u>	_____			_____		
2. _____	_____			_____		
3. _____	_____			_____		
4. _____	_____			_____		
5. _____	_____			_____		
=Total Cover						
Sapling/Shrub Stratum (Plot size: 15x15ft)						
1. <u>None</u>	_____	_____	_____	_____		
2. _____	_____	_____	_____	_____		
3. _____	_____	_____	_____	_____		
4. _____	_____	_____	_____	_____		
5. _____	_____	_____	_____	_____		
=Total Cover			Prevalence Index worksheet: Total % Cover of: Multiply by: OBL species 0 x 1 = 0 FACW species 10 x 2 = 20 FAC species 13 x 3 = 39 FACU species 24 x 4 = 96 UPL species 0 x 5 = 0 Column Totals: 47 (A) 155 (B) Prevalence Index = B/A = 3.30			
Herb Stratum (Plot size: 5x5ft)						
1. <u>Erechtites hieraciifolius</u>	10	Yes			FAC	
2. <u>Persicaria virginiana</u>	3	No			FAC	
3. <u>Toxicodendron radicans</u>	10	Yes			FAC	
4. <u>Rosa multiflora</u>	2	No			FACU	
5. <u>Parthenocissus quinquefolia</u>	10	Yes	FACU			
6. <u>Vitis aestivalis</u>	10	Yes	FACU			
7. <u>Fraxinus pennsylvanica</u>	10	Yes	FACW			
8. <u>Galium mollugo</u>	2	No	FACU			
9. _____	_____	_____	_____	_____		
10. _____	_____	_____	_____	_____		
=Total Cover						
Woody Vine Stratum (Plot size: 30x30ft)						
1. <u>None</u>	_____	_____	_____	_____		
2. _____	_____	_____	_____	_____		
=Total Cover			Hydrophytic Vegetation Indicators: 1 - Rapid Test for Hydrophytic Vegetation 2 - Dominance Test is >50% 3 - Prevalence Index is ≤3.0 ¹ 4 - Morphological Adaptations ¹ (Provide supporting data in Remarks or on a separate sheet) Problematic Hydrophytic Vegetation ¹ (Explain) ¹ Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.			
Hydrophytic Vegetation Present? Yes _____ No <input checked="" type="checkbox"/>						
Remarks: (Include photo numbers here or on a separate sheet.)						

SOIL

Sampling Point: U1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

¹Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

²Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

- | | |
|-------------------------------------|------------------------------|
| — Histosol (A1) | — Sandy Gleyed Matrix (S4) |
| — Histic Epipedon (A2) | — Sandy Redox (S5) |
| — Black Histic (A3) | — Stripped Matrix (S6) |
| — Hydrogen Sulfide (A4) | — Dark Surface (S7) |
| — Stratified Layers (A5) | — Loamy Mucky Mineral (F1) |
| — 2 cm Muck (A10) | — Loamy Gleyed Matrix (F2) |
| X Depleted Below Dark Surface (A11) | — Depleted Matrix (F3) |
| X Thick Dark Surface (A12) | — Redox Dark Surface (F6) |
| — Sandy Mucky Mineral (S1) | — Depleted Dark Surface (F7) |
| — 5 cm Mucky Peat or Peat (S3) | — Redox Depressions (F8) |

Indicators for Problematic Hydric Soils³:

- Coast Prairie Redox (A16)
 - Iron-Manganese Masses (F12)
 - Red Parent Material (F21)
 - Very Shallow Dark Surface (F22)
 - Other (Explain in Remarks)

³Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: None
Depth (inches):

Hydric Soil Present? Yes No

Remarks:

This data form is revised from Midwest Regional Supplement Version 2.0 to include the NRCS Field Indicators of Hydric Soils, Version 7.0, 2015 Errata. (http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_051293.docx)

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required; check all that apply)

- | | |
|---|--|
| Surface Water (A1) | Water-Stained Leaves (B9) |
| High Water Table (A2) | Aquatic Fauna (B13) |
| Saturation (A3) | True Aquatic Plants (B14) |
| Water Marks (B1) | Hydrogen Sulfide Odor (C1) |
| Sediment Deposits (B2) | Oxidized Rhizospheres on Living Roots (C3) |
| Drift Deposits (B3) | Presence of Reduced Iron (C4) |
| Algal Mat or Crust (B4) | Recent Iron Reduction in Tilled Soils (C6) |
| Iron Deposits (B5) | Thin Muck Surface (C7) |
| Inundation Visible on Aerial Imagery (B7) | Gauge or Well Data (D9) |
| Sparsely Vegetated Concave Surface (B8) | Other (Explain in Remarks) |

Secondary Indicators (minimum of two required)

- Surface Soil Cracks (B6)
 - Drainage Patterns (B10)
 - Dry-Season Water Table (C2)
 - Crayfish Burrows (C8)
 - Saturation Visible on Aerial Imagery (C9)
 - Stunted or Stressed Plants (D1)
 - Geomorphic Position (D2)
 - EAC-Neutral Test (D5)

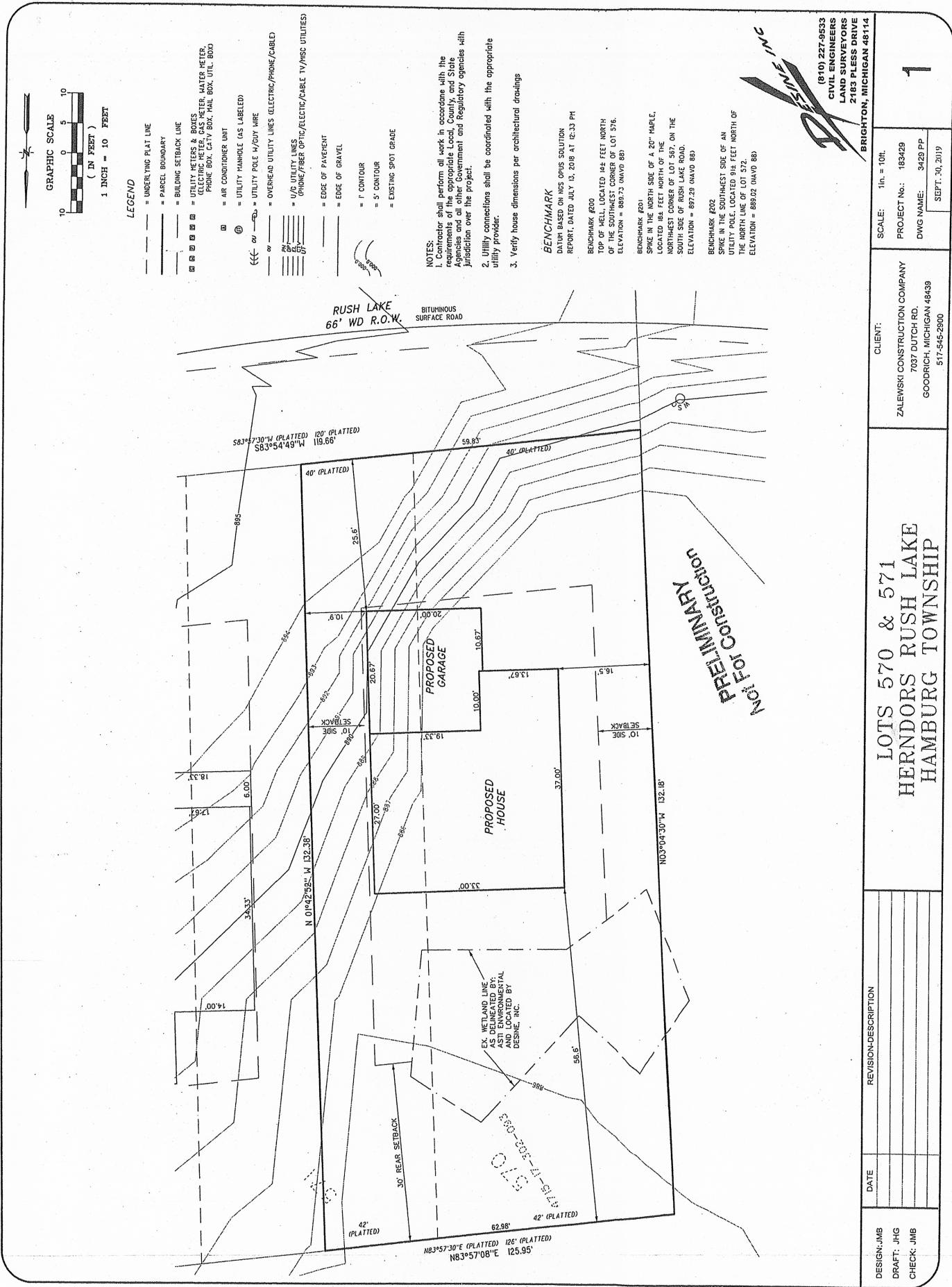
Field Observations:

Surface Water Present? Yes No X Depth (inches):
Water Table Present? Yes No X Depth (inches):
Saturation Present? Yes No X Depth (inches):
(includes capillary fringe)

Wetland Hydrology Present? Yes No X

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:



DETROIT, MICHIGAN 48114
1
NAME: 3429 PP
SUBJECT No.: 183429
DATE: 1 in. = 10 ft.
SEPT. 30, 2019

CLIE
ZALEWSKI CONSTR.
7037 DUTT
GOODRICH, MIC
517-545-

LOTS 570 & 571
HIERNDORS RUSH LAKE
HAMBURG TOWNSHIP

Zalewski Construction Company Incorporated

P.O. Box 211, Ortonville, MI 48462 Cell 313.600.0622

Office 810.636.2950 / 517.545.2900 Fax 810.636.2951

Email: larryzalewski1958@charter.net www.zalewskiconstruction.com

Like us on Facebook

January 26, 2020

To Whom it may concern,

Initially bought Lot 571 and 572 of Herndons Rush Lake No. 1 from Michael Myers under the impression that a tap was there, and it was a buildable lot.

Then bought Lot 15-17-302-03

4/Lot 570 from Robert D. Theys and Realtor Tom Rafferty. Also was under the impression it was a buildable lot with a tap.

So, then to make it more desirable for everyone, I combined all 3 lots and made 2 lots. All of this was done through the Township etc. So still under the impression these are buildable lots.

So, then I went to apply for land use, and they have a topography of lots from many years ago and it shows wet land throughout area. Houses are built throughout this entire area.

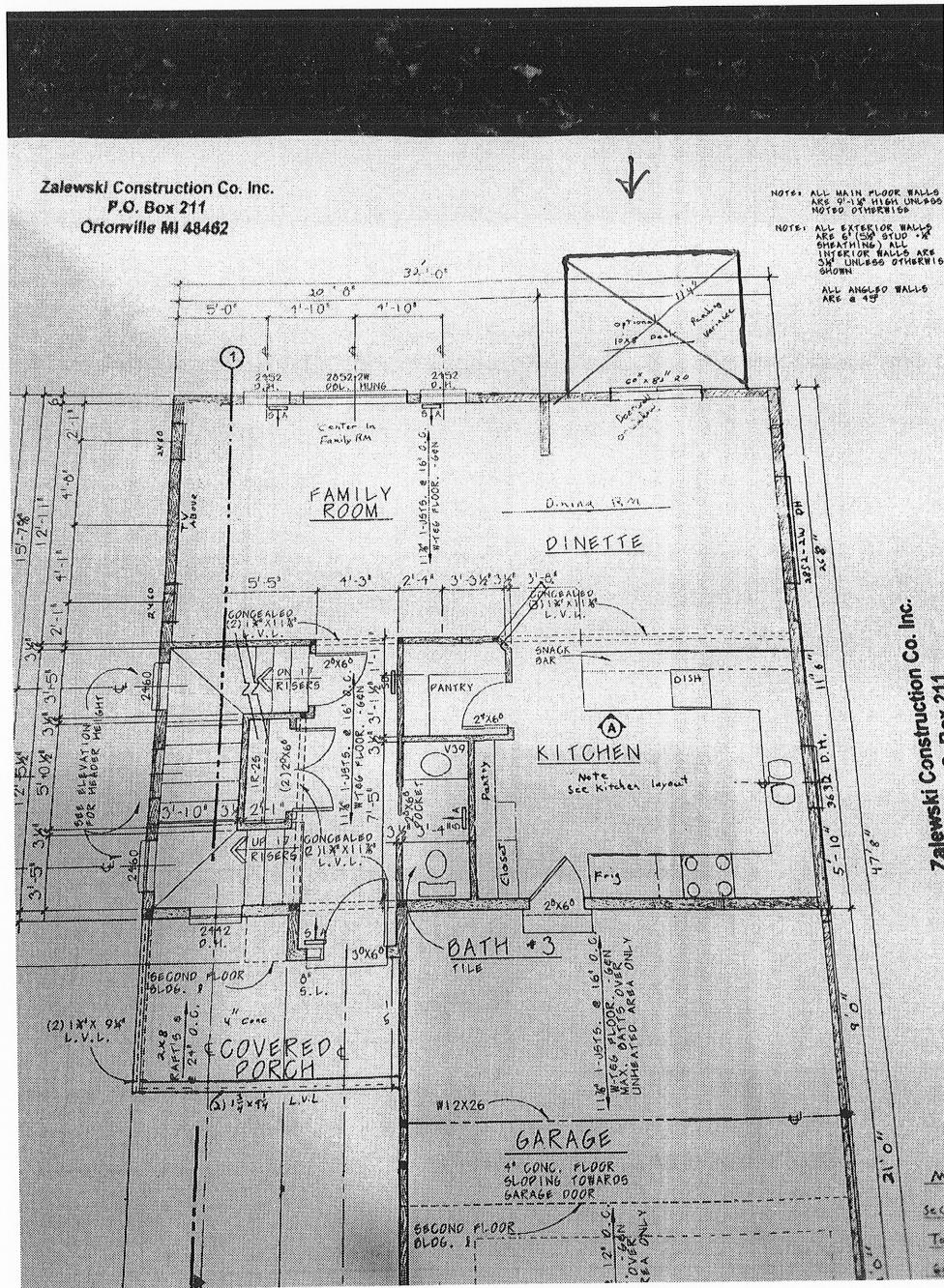
So, I paid and had ASTI Environmental to test the Lot for wetlands. They found one small area that suggested could be wetlands. I had Engineers draw up House placement to stay away from small area of possible wetlands. They worked with Engineers on house placement to stay away for the wetlands. Since then I have put up a silt fence as per attached survey and staked out House for everyone to see. I am just asking for a variance 15' as per plans. Just hoping to get this matter resolved so we can move forward and build a new house and make neighborhood much more desirable.

If you need any further information, please let me know.

Thank you for your time,

Lawrence J Zalewski

Proposed Variance #2



Brittany Stein

From: Amy Steffens
Sent: Thursday, March 5, 2020 11:48 AM
To: Brittany Stein
Subject: Please include this email in staff report packet (exhibit B)

From: Pierce, Jeff (EGLE) <PierceJ2@michigan.gov>
Sent: Thursday, February 13, 2020 9:18 AM
To: Amy Steffens
Subject: RE: Wetlands delineation for Zalewski

Hi Amy,

I do not have any concerns regarding the wetland delineation for the site. However, the plan for the proposed house does not include a grading plan. While the proposed house will technically be outside of the wetland, will they be proposing to fill the wetland to achieve grade for the foundation? I would recommend having them provide a grading plan.

Jeff Pierce
Environmental Quality Analyst
Water Resources Division, Lansing District Office
Michigan Department of Environment, Great Lakes, and Energy

517-416-4297 | piercej2@Michigan.gov

[Follow Us](#) | Michigan.gov/EGLE

From: Amy Steffens <asteffens@HAMBURG.MI.US>
Sent: Wednesday, February 12, 2020 11:19 AM
To: Pierce, Jeff (EGLE) <PierceJ2@michigan.gov>
Subject: FW: Wetlands delineation for Zalewski

Jeff,

Sorry to bother you again but I'm working on the staff report for the variance request on this property and I wondered if you had a chance to look at the wetland reports.

Thanks,
Amy

From: Amy Steffens
Sent: Wednesday, February 5, 2020 3:57 PM
To: Jeff Pierce (piercej2@mi.gov) <piercej2@mi.gov>
Cc: Brittany Stein <bstein@HAMBURG.MI.US>
Subject: Wetlands delineation for Zalewski

Jeff,

Larry Zalewski has filed a variance request to build a new home with an elevated deck closer to the regulated wetlands than the 50-foot setback required by the zoning ordinance. Parcel ID 4715-17-302-093. Attached is ASTI's wetland delineation. Please review and let me know if you believe that an EGLE permit would be required prior to the construction of the proposed house.

Thanks,

Amy Steffens, AICP
Hamburg Township Planning and Zoning Administrator
(810) 222-1167
(Personal office hours 8 am to 3 pm, Monday, Wednesday, Friday)



Zoning Board of Appeals Staff Report

AGENDA ITEM: 7b



TO: Zoning Board of Appeals (ZBA)

FROM: Brittany Stein

HEARING DATE: March 11, 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 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).

ZONING: WFR (waterfront residential district)

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.

- 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.**

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.

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 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).

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 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.

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. 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.

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, 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).

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, 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).

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

\$ 650

(4 Variances)

March 11 @ 7pm

HAMBURG TOWNSHIP

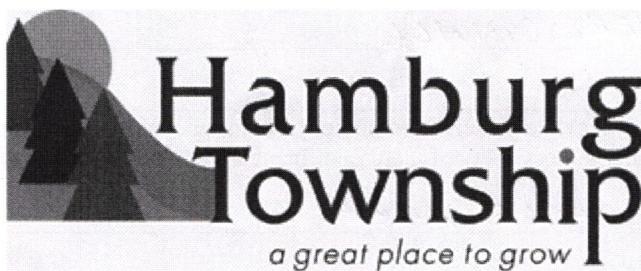
Date 02/06/2020 4:00:12 PM

Ref ZBA2000-3

Receipt 1223522

Amount \$650.00

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: 123melmorgan@gmail.com (W)

Street: 9670 MARSHALL RD City SOUTH LYON State MI

5. Appellant (If different than owner): Bruce Donovan Const Phone: (H) 48178

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).

Melvin Mayr, 1-29-2020
Owner's Signature Date

John Yonan, 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 if 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

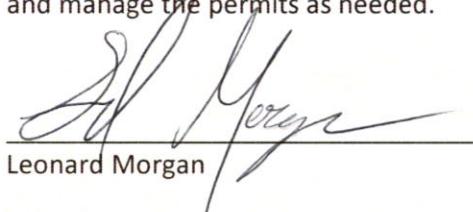
Dear Hamburg Township:

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.

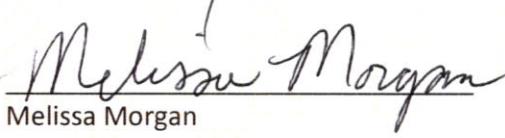
We would like to formally grant permission for Bruce to present an overview of our building plans and pull permits on our behalf to expedite the process.

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

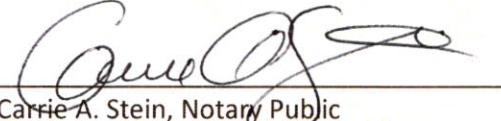

Melissa Morgan

1-4-2020
Date

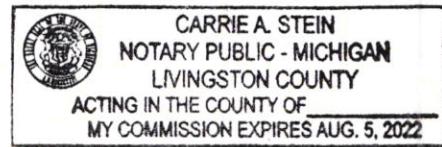
NOTARY ON FOLLOWING PAGE

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.

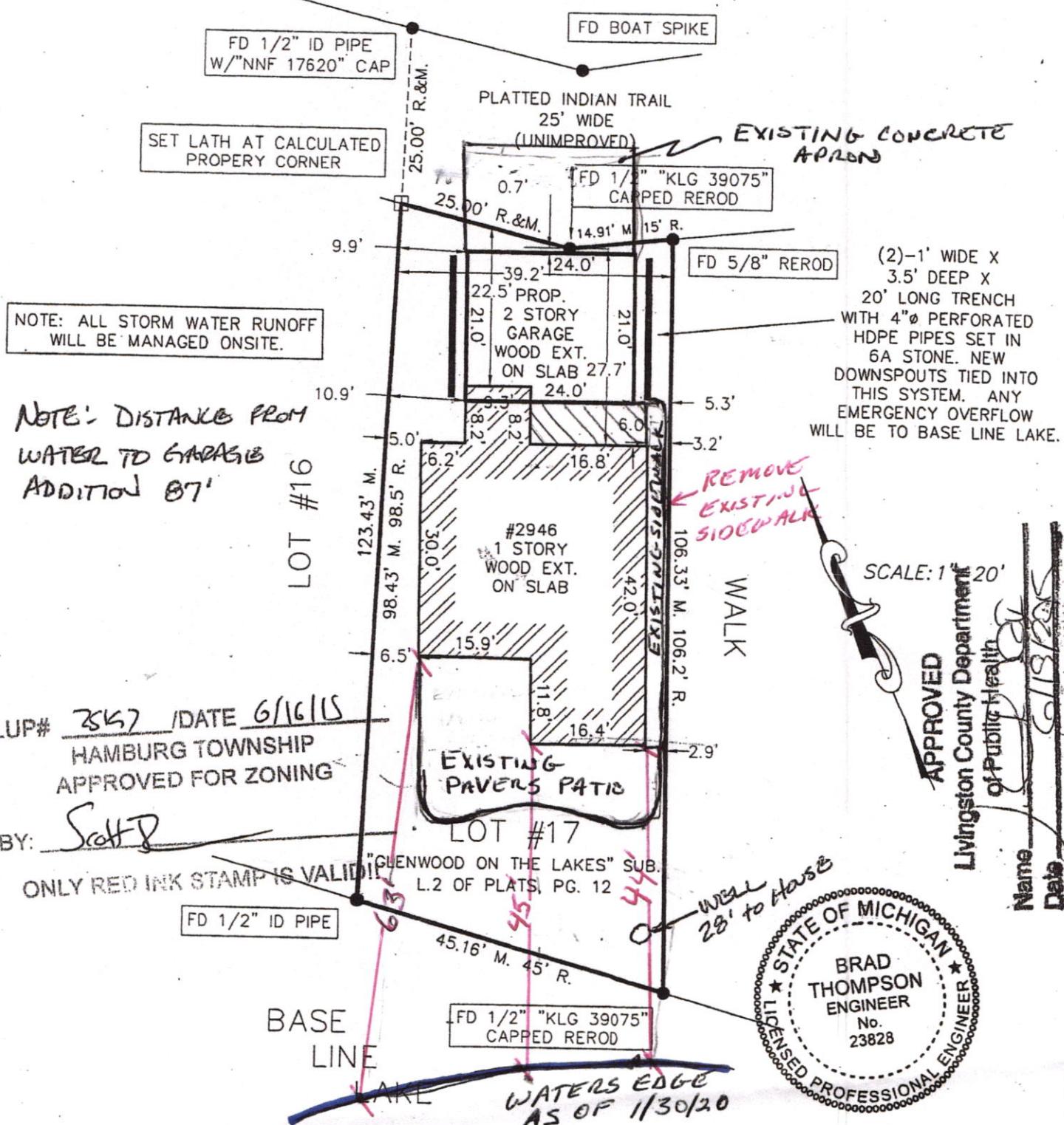


Carrie A. Stein, Notary Public
County of Residence: Livingston
Notary Expires: 8/5/2022



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

Exhibit B



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

DATE: 3-17-15

JOB# 15-4001

B.F. THOMPSON, P.C.

517/ 548-3142

FAX 517/ 548-0049

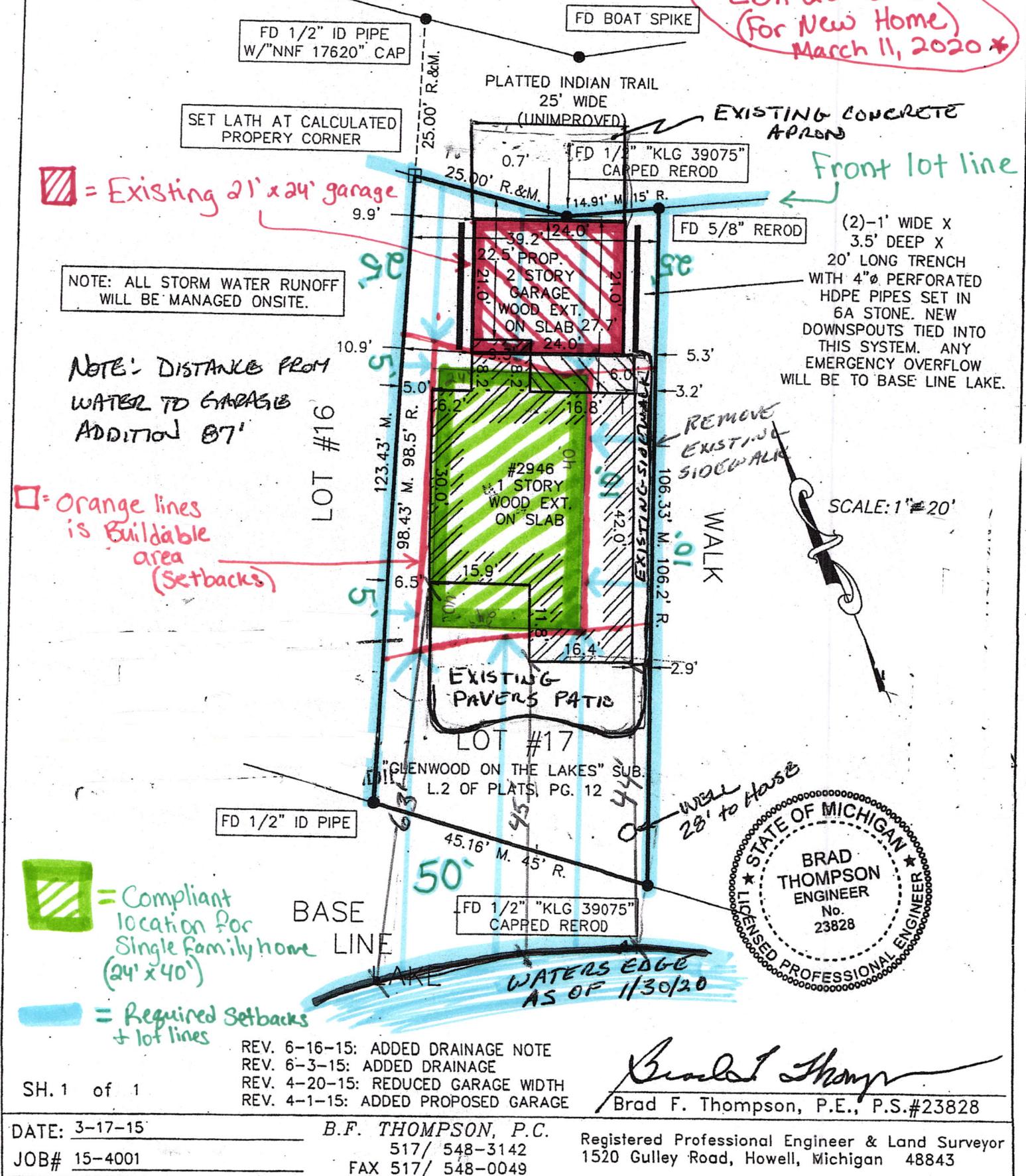
Registered Professional Engineer & Land Surveyor
1520 Gulley Road, Howell, Michigan 48843

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

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 *



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, January 8, 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: Auxier, Dolan, Rill, Priebe & Watson,

Absent: None

Also Present: Amy Steffens, Planning & Zoning Administrator

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 20-0001

Owner: Della Ann and Richard Cieciek

Location: 7875 Maltby Road, Brighton MI 48116

Parcel ID: 15-12-200-031

Request: Variance application to allow for the following additions to an existing dwelling: 192-square foot addition to the northwest façade; a 58-square foot addition to the southwest façade; and a 376-square foot covered deck addition to the south façade. The additions will have a 6-foot west front yard setback (25-foot front yard setback required, Section 7.6.1.).

Mr. Ciecielk, applicant, stated that the house is in need of a new roof, and he was hoping to add these additions at the same time. He stated that a substantial part of the house is already in the setback and he is looking to square off the house to make it less "chopped up". He stated that there would only be 178 square feet of deck within the setback area with the rest of the deck on the south façade. Although it is true that this is his own personal preference, the well that services the house is at the northeast corner of the wing that is going off the east corner of the house. The electricity also comes into the house from that side. Discussion was held on the well location. Chairperson Priebe stated that it should be noted that there is an exiting slab to the north of the existing house.

Amy Steffens, Planning & Zoning Administrator stated that the subject site is a one-acre parcel that fronts onto Maltby Road to the south and Fuller Street to the west. Single-family dwellings are located in all directions. The site is improved with a single-story 1,171 square foot dwelling and a 440-square foot detached garage. If approved, the variance request would allow for the construction of a 192-square foot addition to the northwest façade; a 58-square foot addition to the southwest façade; and a 376-square foot covered deck addition to the south façade. The additions will have a 6-foot west front yard setback where a 25-foot front yard setback is required. The reason that these additions are noted to have a 6 foot setback is because this parcel is defined by our ordinance as a corner lot fronting onto two rights-of-ways. On a corner lot, any footprint of the house must meet the required front yard setback on both rights-of-ways. For accessory structures, it is a little different in that it would only have to meet the main front yard setback. In this case, the additions are to the primary structure. She reviewed the Standards of Review. She stated again, the additions must meet both rights-of-ways. The proposed additions more than double the linear footage of the non-conforming front yard setback along Fuller Street. Currently, 16 linear feet of the dwelling is 6 feet from the front property boundary instead of the 25 feet required by the ordinance. The additions, if approved, would add an additional 25 linear feet of non-conforming dwelling. The eight dwellings that gain access from Fuller all exceed the required 25-foot front yard setback requirement. The dwelling to the west also fronts onto Maltby and Fuller but has compliant setbacks from both rights-of-way. One potential condition of approval that could lessen the impact of the proposed additions would be to limit access from Fuller, thereby creating a visual aesthetic that Fuller is a side yard. That may include a deed restriction prohibiting any future driveway from Fuller Street. 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. It is a sizeable, one-acre parcel. She understands that the house is already existing in a non-conforming yard, but the non-conformity would be doubled if the three variance requests were approved. A substantial property right is not preserved based on granting a variance for a particular architectural design or a single site plan. The proposed additions, with a six-foot front yard setback instead of the required 25-foot front yard setback, could be reconfigured to extend into the north, east, or south yards rather than into the west front yard. A covered porch does not advance a substantial property right. Staff recommends however that, if approved, a condition be placed on the approval that would not allow the porch to be enclosed by screens, glass, or solid walls. As stated, the eight dwellings that gain access from Fuller all exceed the required 25-foot front yard setback requirement. Expanding a non-conforming structure while not materially detrimental to the public welfare is contrary to how the community envisions orderly development. The subject site is in the Northeast Hamburg/Winans Lake planning area. This area envisions a mixture of residential densities. The proposed additions would not affect the purpose or objectives of the master plan. The subject site is a residentially zoned, developed, and used property. The site is one acre in size with adequate room for a compliant addition. The applicant has stated that proposed location of the additions is a personal preference and is not a condition specific to the subject site. The ZBA must find that the variance requests are the minimum necessary for conditions applicable to the site. Staff does not believe that they are. She further stated that we had an amendment to the zoning ordinance Section 11.3., non-conforming buildings and structures in November, 2017. The ordinance previously allowed an expansion of a non-conforming structure without ZBA approval up to fifty percent of the market value of the existing structure. However, with the zoning text amendment, the ordinance requires all new construction to come into compliance with the setback standards of the ordinance. Staff offers this as a reminder that the zoning ordinance is written to phase out non-conforming structures, not encourage or create them. The site is zoned for single-family residential and the proposed variance would not change that permitted use. Again, the ZBA must find that there is something so peculiar about the property that the terms of the ordinance cannot be met. She believes in this case there are alternatives and question whether this is the minimal necessary for the continued use of a one-acre parcel for single family residential.

Member Dolan questioned whether this is a unique corner lot that the ordinance did not take into consideration as well as the topographical situation making the frontage off of Fuller unusable as a front yard. Steffens stated that the grade changes do make it difficult to access the parcel from Fuller. However, the intent of the ordinance is that Fuller acts as a front yard aesthetically for other properties that access from Fuller.

Member Auxier stated that from Fuller, the house appears to be approximately 35 feet from the road. Furthermore, he stated that the entire house is currently in that setback. Steffens stated that she would then question whether it is no longer the intent of the Township to phase out non-conforming structures. Auxier stated that he would say not, but a corner lot is somewhat more difficult. He discussed various options. Mr. Cieciek stated that they did look at other options. However, 2.5 feet of the west side of the house is already in the setback area. He cannot see how that could be phased out. If he put the additions on the east side, he would have to relocate the well and service box. Further discussion was held on other options.

It was stated that the entire structure is non-conforming. Any addition would be increasing the non-conforming structure. It was stated that our ordinance requires that any new construction would have to come into compliance. The question is does the applicant have an extraordinary circumstance.

Member Dolan stated that he would like to see a deed restriction so that we can treat Fuller as a side yard instead of a front yard. Steffens stated that even with the deed restriction, it will always have to meet the front yard setback on Fuller. There is no deed restriction that you could put into place that would supercede the zoning ordinance. Her suggestion of the deed restriction was so that it maintains the look of a side yard instead of a front yard. Mr. Cieciek stated that it would be impossible to access the property from Fuller because of the grade. He discussed the access to the home. He stated that he feels that this is a unique situation.

Member Auxier stated that he feels that there is a practical difficulty and could justify all of the additions as proposed. The question he has is it reasonable to table this and see if they could re-configure the added space to the northeast corner that would comply with the intent of the ordinance. Further discussion was held on reconfiguring the additions. Member Dolan agreed that there is a uniqueness in this situation that is not going to be seen on other properties.

Member Rill stated that the frontage on Fuller is never going to look like a front yard given the grade and configuration. He stated that the additions will greatly improve the home. It is possible to reconfigure to make it more conforming, but the home is never going to be conforming without removing a portion of the house.

Discussion was held on the addition of the front porch. Mr. Cieciek stated that their living room has no front access. He was adding that porch so that they would have access to the south off of Maltby. Only about 1/3 of that would be into the setback. Further, he stated that the variances will have no effect on the neighbors.

Chairperson Priebe stated that we have a nonconformity, we are not creating one. She does not have a difficulty with squaring up the house.

Chairperson Priebe read a letter received by the Board from Brian Bradford, neighbor directly next door to the parcel in question. The letter is giving his full endorsement of the proposed plans and variances.

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

Planning & Zoning Administrator Steffens stated that at the time of the application, Mr. Cieciek had indicated that at a future date, they would be looking at changing the configuration of the garage and possibly adding a breezeway. If you are discussing making changes to the addition, it may interfere with their future plans. Mr. Cieciek stated that the existing slab is pitted and cracked, and they will be looking at replacing it. He wanted to find out about putting in footers so that in the future it would be legal for anything constructed on that slab.

The question was asked why the staff is recommending a contingency that the front porch remain unenclosed. Steffens stated that unfortunately we run into situations where the ZBA will approve a variance for one type of project only to find some months later that it has been changed or enclosed. An open porch has a very different look within a setback than an enclosed structure.

Motion by Auxier, supported by Rill

To approve variance application ZBA 20-0001 at 7875 Maltby Road to allow for the following additions to an existing dwelling: 192-square foot addition to the northwest façade; a 58-square foot addition to the southwest façade; and a 376-square foot covered deck addition to the south façade. Variance approval is granted based on the condition that the covered porch shall never been enclosed with screen, glass or solid walls. The additions will have a 6-foot west front yard setback (25-foot front yard setback required, Section 7.6.1.) per the plans on file dated December 4, 2019. Prior to the issuance of a land use permit a deed restriction shall be recorded that prohibits access from Fuller in perpetuity. 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 property created by having two front yards because of the corner lot 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.

Dolan stated that there is a uniqueness to the property which is why he can support the motion.

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

8. New/Old business

- a) Approval of December 11, 2019 ZBA Minutes

Motion by Auxier, supported by Watson

To approve the minutes of the December 11, 2019 meeting as written

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

Member Dolan asked how the applicant would proceed in getting the deed restriction recorded. Steffens stated that they can have an attorney draft the document or she has an example that she has used for simple matters that could be followed and submitted to the Township for review. She stated that we will want to make sure that the Township can enforce the document if there were ever to be a curb cut installed. She is more than happy to assist in preparing the document.

9. Adjournment:

Motion by Rill, supported by Dolan

To adjourn the meeting

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

The meeting was adjourned at 7:51 p.m.

Respectfully submitted,

Julie C. Durkin
Recording Secretary

The minutes were approved as presented/Corrected: _____

Chairperson Priebe