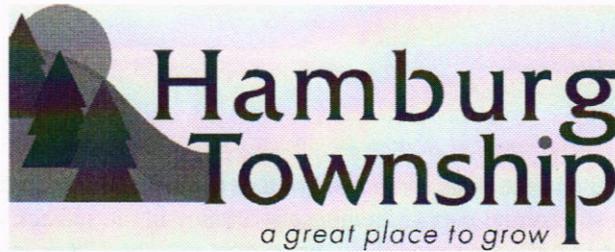


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**Supervisor:** Pat Hohl  
**Clerk:** Mike Dolan  
**Treasurer:** Jason Negri  
**Trustees:** Bill Hahn  
Annette Koeble  
Chuck Menzies  
Jim Neilson

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**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. Cieciek, 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 be 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:**

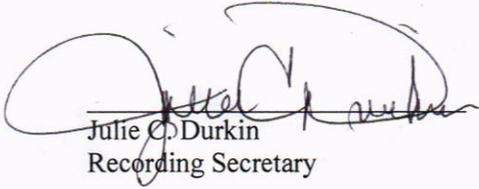
Motion by Rill, supported by Dolan

To adjourn the meeting

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

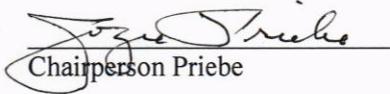
The meeting was adjourned at 7:51 p.m.

Respectfully submitted,



Julie C. Durkin  
Recording Secretary

The minutes were approved as presented/Corrected: 3-11-20



Chairperson Priebe