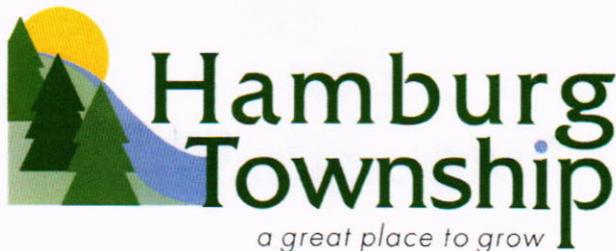


P.O. Box 157  
10405 Merrill Road  
Hamburg, Michigan 48139-0157

(810) 231-1000 Office  
(810) 231-4295 Fax



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

---

**Hamburg Township  
Zoning Board of Appeals Minutes  
Meeting Held Remotely due to COVID-19  
Wednesday, June 10, 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, Priebe, Rill and Watson

Absent: None

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

**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 20-0003

Owner: Leonard and Melissa Morgan

Location: 2946 Indian Trail Dr. Pinckney, MI 48169

Parcel ID: 15-32-402-015

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

Mr. Morgan, applicant, stated that back in March they presented their original plan. At that time, it was suggested that they take 2.5 feet off the east side setback. They actually took off 3'11" so that the wall of the house and the garage will be continuous. The only other change was that they added a dormer to the garage to make up for the lost square footage. Discussion was held on the change in the lot coverage from 56% to 52%.

Amy Steffens, Planning & Zoning Administrator, stated that on March 11, 2020, the ZBA considered the request to remove an existing house and rebuild 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 and an aggregate side yard setback of 7.9 feet. At that March meeting, the ZBA tabled the request to allow the applicant time to re-draw the plan to shrink the footprint and give a larger setback on one of the side yards and reduce the total lot coverage. In May, the applicant submitted plans that showed the need for a front yard setback variance as well. They are asking for a 1 foot front yard setback where 25 feet is required. That would be for the second story dormer over the existing garage that was granted a variance in 2015. They have shrunk the footprint for an aggregate side yard setback of 10.3 feet where 15 feet is required. The rear yard setback from the ordinary high water mark of Base Line Lake is 41.1 feet where a 50-foot setback is required. The elevated balcony will also have a setback of 41.1 feet. The balcony is required to have a 44 foot setback because an elevated structure is allowed to project into the setback by 6 feet. She provided a table outlining the setbacks. The impervious surface has come down from 56% to 52%

Steffens reviewed the findings of fact. She stated that the existing garage was granted variance approval in 2015 to have a 0.7-foot front yard setback; the garage was proposed to have a 12/12 pitch roof, a 240-square foot unfinished storage attic space, and no windows facing the road. The current proposal is for a second story to be built over the garage with a 1.1-foot front yard setback, with a dormer and two windows facing the road. Accessory structures and living space have different setback requirements because of the way these spaces are used and the privacy concerns surrounding the use. A typical garage is used for parking and storage and is a more acceptable use within the setback, as evidenced by the township's adoption of reduced front setbacks for accessory structures. An accessory structure has very different privacy and aesthetic impact than living space. Living space setbacks help define the character of the neighborhood, define the scale of residential streets, and provide privacy between living spaces on adjacent and adjoining residential lots. A second story with a 1-foot setback from a property boundary, where one does not now exist, is not due to an exceptional or extraordinary circumstance applicable to the property involved that does not apply generally to other properties in the same district or zone. The lot is relatively small in size but staff has demonstrated that a compliant dwelling can be constructed on this lot. Personal preference drives the need for the variance for a second story living space at 1 foot from the property boundary, not a condition of the property. This subject site is a 4,164 square foot lot that abuts Base Line Lake to the south, requiring a 50-foot setback from the Ordinary High Water Mark, whereas the proposed house will have a 41.1-foot from the OHM. The balcony would also have a 41.1-foot setback from the OHM 3 where a 44-foot setback would be required; the existing house does not have a balcony. The existing and proposed dwelling and the balcony would comply with the required 30-foot setback from the rear property boundary. The setback from the OHM applies to all properties in the district and throughout the township and is not a condition exceptional to the subject site when a compliant dwelling could be constructed. Because the lot is less than 60 feet wide in WFR zoning district, the lot has reduced side yard setbacks of an aggregate of 15 feet with no one side setback less than 5 feet. The current single-story dwelling has an aggregate side yard setback of 7.9 feet; proposed is a two-story dwelling that increases the bulk of the non-conforming side yard setback. The proposed dwelling would be constructed with the existing 5.1-foot west side yard setback and a 5.2-foot east side yard setback for an aggregate side yard setback of 10.3 feet. Only 7.7 linear feet of a covered porch in the north east corner of the dwelling would have a 5.2-foot east side yard setback. The platted walkway to the east does provide an additional buffer, however to the dwelling immediately to the east, and a deviation to the east property boundary could be a reasonable deviation from the ordinance. Finally, the application submitted for the 2015 variance request indicated that with the addition of the garage total lot coverage would be 37.7 percent and total impervious surface coverage would be 41.9 percent. However, the application submitted with the current variance request indicates that the existing total impervious surface coverage is 60 percent which was not granted variance approval. The ordinance allows up to 50 percent lot coverage with the submittal of an engineered grading and drainage plan. The proposed project would provide 52 percent total impervious surface coverage. Impervious coverage could be reduced by reducing the amount of patio pavers on the lot or using engineered pervious pavers. Any lot coverage over 50 percent, even if granted a variance, would require an engineered grading and drainage plan to be submitted. There are 16 existing homes within

300 feet of the subject site. The average size of the homes within 300 feet of the subject lot is approximately 2,000 square feet, and the proposed dwelling would be 2,541 square feet, attached to the existing 504 square foot garage. A substantial property right is not preserved based on granting a variance for a particular architectural design. The proposed dwelling, in the same footprint as the existing home, is a personal preference of the property owners. The home could be redesigned and reconfigured to meet the required setbacks. Based on the request to rebuild a single family dwelling, there is a compliant location on the property for a new two story single family dwelling with a 960 square foot footprint. The demolition of a single-story dwelling and construction of a new two-story single-family dwelling with a larger footprint with deficient setbacks would have an increased impact to surrounding properties. The ordinance requirement for these required setbacks is intended to provide adequate space, open vistas, and privacy throughout neighborhoods and between structures on smaller residential lots. It is encouraged to construct a more compliant dwelling on the lot to decrease the impact on surrounding properties. She provided diagrams showing impact to a surrounding home, in particular, the difference in impacts of a single story and two-story structure. 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. The subject site is a residentially zoned, developed, and used property. While the site is 4,164 square feet, a compliant buildable area is available. The proposed location of the new home is a personal preference and is not a condition specific to the subject site. There is no condition or situation that is so general or recurrent a nature as to warrant approval of the proposed variance request. A home of a smaller size could comply with the required front and side yard setback standards and ordinary high water mark setback standards. The lot coverage could also be reduced by decreasing the size of the patio and other sidewalks on the property. The use of the site is single-family residential and the proposed variance would not change the use. The home could be redesigned and reconfigured to meet the required setbacks. Based on the request to rebuild a single family dwelling, there is a compliant location on the property for a new two story single family dwelling with a 960 square foot footprint. The need for a variance is based on personal preference. Staff is recommending denial of the second story over the garage as well as the setback from the OHM. Staff is also recommending that the ZBA consider decreasing the aggregate side yard setback. The platted walkway to the east is a condition unusual to this property and will lessen the impact of a reduced aggregate side yard setback.

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

Discussion was held on what was asked of the applicant at the March meeting. Steffens stated that the issue was the lot coverage, and the Board did want to see a reduced footprint.

Mr. Morgan stated that they were told that they would have to go back on the east side 2.5 feet, but they did have to go back 3 foot 11 inches to be in line with the wall of the garage. They were told that they could not put pillars on the porch and they will be removing the sidewalk on that side as well. He further discussed the addition of the brick pavers which they did go through the proper procedures with the Zoning Department. Discussion was held on the removal of the 3+ feet the entire length of the house. Mr. Morgan stated that they would also agree to the removal of part of the patio so that it would not extend past the house.

Discussion was held on the proposed second story addition over the garage. Steffens stated that when the request was reviewed in March, that was not part of it. It was stated that if they eliminate the windows facing the front, that would eliminate the privacy concern. Steffens stated that you still have the concern about the impact of the second story at the setback. It was stated that the height of the garage does not change. Mr. Morgan stated that there is a bonus room there now and in the March plans it was being converted to a bedroom. Now they are adding a dormer. When they took the 4 feet from the side, they shifted the one bedroom downstairs to above the garage.

Chairperson Priebe stated that it should be noted that the one foot front setback is not from the actual road, but the platted road. There is still 25 feet to Indian Trail. Steffens stated that you have the traveled roadway and the unimproved right-of-way.

Member Auxier stated that he feels that there is adequate space on the sides and there is not a concern about emergency vehicle access. In the front there is 25 feet of unimproved area so there is plenty of space, and the garage is

existing. He does feel that the lake side and the west side could have been shrunk more to come more into conformance.

Chairperson Priebe stated that we could approve or deny all or part of the request.

Motion by Auxier, supported by Rill

To approve variance application ZBA 20-003 at 2946 Indian Trail Dr. to allow for the construction of a two-story dwelling. The dwelling will have a 1.1 foot north front yard setback (25-foot front yard setback required, Section 7.6.1.), a 5.2 foot east side yard setback resulting in an aggregate side yard setback of 10.3 feet (15-foot aggregate side yard setback required, Section 7.6.1. fn. 4); and a 41.1-foot south rear setback from the ordinary high water mark of Base Line Lake (50-foot setback from the OHM required, Section 7.6.1. fn. 3). A 134-square foot balcony would have a 41.1-foot setback from the OHM (44-foot setback from the OHM required, Section 8.18.2). Total lot coverage would be 52 percent or less, (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.

Roll Call Vote: Ayes: Auxier, Priebe, Rill and Watson

Nays: Dolan MOTION CARRIED

b) ZBA 20-0005

Owner: Dennis J. Pennington

Location: 5313 Gallagher Blvd. Whitmore Lake, MI 48189

Parcel ID: 15-27-301-201

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

Mr. Dennis Pennington, applicant, stated that this originally was proposed as a 1,300 square foot building. Due to a problem with the Homeowners' Association, it was downsized to 840 square feet. They received an 8 foot variance, however that was not approved by the Homeowners' Association. He is now looking at building a 180 square foot shed for storage. He is proposing to build within 8 feet of the wetlands. It would not be visible to any of his neighbors. He has provided some exhibits to address the drainage concerns. According to his consulting firm, it will not impact the wetlands. They indicated that most of the water in those wetlands is ground water. This building will take .004% of the lot.

Erik Perdonik of the Zoning Department stated that the subject site is an approximately 38,769-square foot parcel that fronts on Gallagher Boulevard to the west and Strawberry Lake to the east. An existing two-story, single-family dwelling with an attached garage is located on the site, with a combined footprint of approximately 2,176 square feet. Single-family dwellings are located to the north and west of the site, and mostly unimproved land used for boat launching is located to the south. There is a regulated wetland area approximately 0.20 acres in area along the southern portion of the site, comprising approximately 22 percent of the total site area. According to the environmental report, the regulated wetland boundary has been delineated consistent with our zoning ordinance. In July of 2016, the applicant applied for a Land Use Permit to construct a much larger structure than what he is proposing tonight that would have encroached into the wetlands. At the November 8, 2017 Regular Meeting of the Zoning Board of Appeals, the Board granted variance application ZBA 17-021, permitting the construction of a smaller 24-foot by 35-foot detached accessory structure, to be located no less than eight feet from the regulated wetland boundary with the condition that a physical buffer be used to protect the wetlands. Since the original application, the applicant has reduced the structure by approximately 1,120 square feet and by 660 square feet since the 2017 variance approval. The property appears to be within the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM) 100-year floodplain, and more specifically the AE flood zone of Strawberry Lake. As a result, the floor must be at least at the Base Flood Elevation (BFE), as evidenced by an Elevation Certificate to be provided prior to the

issuance of a Land Use Permit. The structure's floor can be below the BFE only if the structure will be anchored and vented to allow floodwaters to pass through.

Perdonik stated that a wetland delineation report prepared by ASTI Environmental dated November 1, 2017 was received by Staff on November 8, 2017. Any variance from setback requirements as a result of this hearing will apply to the delineated boundary shown in that report. He stated that he has outlined some suggestions that the Zoning Board of Appeals may request within their approval. Based on the most recent 2018 environmental report, staff is of the opinion based on the smaller structure that a drainage plan is not necessary in this case. A physical barrier alone would be most appropriate.

Perdonik reviewed the Standards of Review. He stated that the 50-foot setback required from the boundary or edge of a regulated wetland under Section 9.9.3.B.1 of the Zoning Ordinance applies generally to all properties in Hamburg Township, regardless of the district or zone in which they are located. However, the presence of the approximately 0.20-acre wetland along the southern portion of the subject site, comprising approximately 22 percent of the 0.89-acre site, is an exceptional or extraordinary circumstance or condition applicable to the subject site that does not apply generally to other properties in the same district or zone, the WFR District. The size and location of the approximately 0.20-acre wetland certainly limits available options for siting a detached accessory structure within the required setbacks; however, there is reasonable space on the subject site to construct an accessory structure of the proposed size that meets the 50-foot setback from the regulated wetland required under Section 9.9.3.B.1, and the 10-foot side yard and 25-foot front yard setbacks required for all properties within the WFR District under Section 7.6.1 of the Zoning Ordinance. The variance preserves a substantial property right possessed by other property in the same zone and vicinity; in this case, the right to construct a complaint detached accessory structure in a zone in which it is customarily permitted, the WFR District. However, a structure of the proposed size, if it were situated differently, could fully comply with the Zoning Ordinance. Nevertheless, the applicant has already chosen to reduce the size of the accessory structure by 660 square feet since a variance was approved for a larger 840 square foot accessory structure at the ZBA's November 8, 2017 Regular Meeting. So long as efforts are made to ensure protection of the wetland, the granting of such variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located because the proposed structure is to be located such that it is approximately 80 feet from the nearest property line adjoining another single-family residential property, and such that it is unforeseeable that it would significantly impair visibility, especially since the structure is proposed to be 16 feet in height, 15 feet in length, and 12 feet in width, giving it a relatively small overall profile from any angle. In addition, the structure is proposed to be set back 192 feet from Gallagher Boulevard and approximately 100 feet from the ordinary high water mark (OHWM) of Strawberry Lake, which more than satisfies the 25-foot front yard and 50-foot OHM setbacks required under the Zoning Ordinance. The subject site is within the South Hamburg/Strawberry planning area of the Master Plan, which envisions primarily rural, low-density, single-family residential development in the areas north of Strawberry Lake Road. Because the variance request does not propose an increase in density beyond the one existing dwelling, granting the request will not adversely affect the purpose or objectives of the Master Plan. The condition or situation of the subject site for which the variance is sought is not of so general or recurrent a nature in light of the presence of the approximately 0.20-acre wetland along the southern portion of the subject site, comprising approximately 22 percent of the 0.89-acre site, and the required 50-foot setback from such wetland that results. The use of the site is presently single-family residential, which is a use permitted by right in the WFR District in which it is located, and granting a variance to permit the construction of a complimentary detached accessory structure for personal storage use will not change the present use. With the construction of the existing dwelling and garage, reasonable use of the land is already permitted. Furthermore, a complaint detached accessory structure can be sited fully in compliance with the Zoning Ordinance, despite the limitations caused by the existence of the wetland. Nevertheless, the applicant has already chosen to reduce the size of the accessory structure by 660 square feet since a variance was approved for a larger 840 square foot accessory structure at the ZBA's November 8, 2017 Regular Meeting.

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

Chairperson Priebe stated that not only is there wetlands on the property, but a portion of the property drops drastically so we are dealing with topography as well.

Member Auxier asked if the applicant received Homeowners' Association approval for the shed. Mr. Pennington stated that he has. The applicant was asked if he understands the staff's recommendation. He stated that he does.

Motion by Auxier, supported by Watson

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

1. The applicant shall submit an Elevation Certificate demonstrating that the floor of the proposed accessory structure is at the BFE, or if the structure will be below the BFE, the applicant shall demonstrate that it will be anchored and vented to allow floodwaters to pass through.
2. The applicant shall construct a physical barrier along the wetland boundary to protect the wetlands from any encroachment or trampling.
3. The applicant shall submit a site plan indicating the limits of any grading.

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

Roll Call Vote: Ayes: Auxier, Dolan, Priebe, Rill and Watson      Nays: None      MOTION CARRIED

#### 8. New/Old business

- a) Approval of May 13, 2020 ZBA Regular Meeting Minutes
- b) Memo of Findings for ZBA 20-0002
- c) Memo of Findings for ZBA 20-0004

Motion by Rill, supported by Watson

To approve the minutes of the May 13, 2020 meeting minutes as written

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

#### 9. Adjournment:

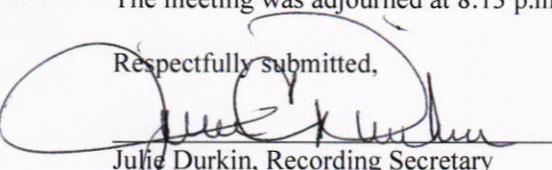
Motion by Auxier, supported by Rill

To adjourn the meeting

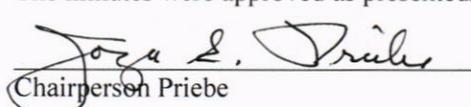
Voice vote: Ayes: 5    Nays: 0    Absent: 0    MOTION CARRIED

The meeting was adjourned at 8:13 p.m.

Respectfully submitted,

  
Julie Durkin, Recording Secretary

The minutes were approved as presented/corrected: 7-8-20

  
Chairperson Priebe