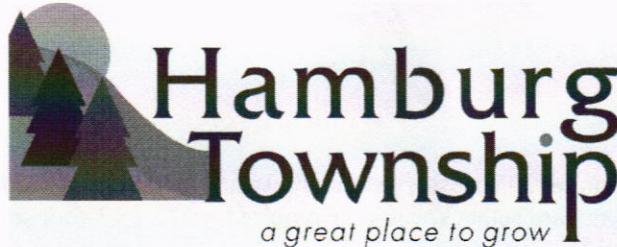


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**Supervisor:** Pat Hohl  
**Clerk:** Mike Dolan  
**Treasurer:** Jason Negri  
**Trustees:** Bill Hahn  
Annette Koeble  
Chuck Menzies  
Patricia Hughes

**Hamburg Township**  
**Zoning Board of Appeals Minutes**  
**Wednesday, August 12, 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: Diepenhorst, Dolan, Priebe, Rill and Watson

Absent: Auxier

Also Present: Amy Steffens, Planning & Zoning Administrator

**4. Correspondence:** None

**5. Approval of Agenda:**

Motion by Dolan, supported by Diepenhorst

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 20-008

Owner: Michael Dolen

Location: 10910 Bob White Beach Boulevard Whitmore Lake MI 48189

Parcel ID: 15-27-40-037

Request: Variance application to permit the construction of a 1,010-square foot accessory structure with a 15-foot front yard setback (25-foot front yard setback required, Section 8.3.) and a 15.3-foot setback from a regulated wetlands (50-foot setback from a regulated wetlands required per Section 9.9.3.B.).

Planning & Zoning Administrator Steffens stated that due to a medical reason, the applicant who is currently in California, was unable to attend this meeting. Neither our Zoning Ordinance nor the Zoning Enabling Act requires that the applicant appear in person. Given the circumstances, it was felt that it would be appropriate for staff to read into the record the applicant's responses to each of the findings of fact as their testimony.

Steffens stated that this is an application for an accessory structure with a 15-foot front yard setback from Bob White Beach Boulevard, where a 25-foot front yard setback would be required, and a 15.3-foot setback from a regulated wetland, where a 50-foot setback would be required.

Steffens read the following response from Michael Dolen, applicant:

**18. 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.**

On the southern half of Bob White Beach, lakefront homes have their garages in back, across the street. Our lot happens to have what may be the smallest piece of land for its garage; 50 by 90 foot. Normally, that would allow for the construction of a 30 by 35 foot garage. However, because the lot is in the shape of a slanted rectangle (parallelogram), that is not possible. The practical difficulty of building an asymmetric parallelogram shaped structure to follow the shape of this lot would render conformity unnecessarily burdensome.

By allowing the garage to encroach the front setback 10 feet, it would allow for a rectangular garage of the same allowable 35 foot depth which would otherwise be permitted, if the lot was rectangular. In order to respect the wetlands in back, an encroachment on the front is preferable versus the rear.

The survey data records the road as being 40 feet wide. In actuality, the literal paved road is between 17 to 19 feet wide. The remaining 21 to 23 feet of "road" is actually a lawn and a gravel driveway. It's entirely on one side of the road – the same side as the garage lot.

This additional land, which is 21 to 23 feet in depth, consists of grass, planters, small trees, and a permanent bench carved out of old tree stumps (all of these were placed by prior owners, not us). It was erroneously assumed to be part of the property by prior owners, as well as us.

Because of this anomaly, even with a 10 foot encroachment on the front setback, the garage is still much further than 25 feet from the actual paved road (it's 35 to 40 ft away). In turn, it still holds true to the spirit of the 25 foot front setback.

For the existing garage, new garage, as well as neighboring garages, these all sit closer than 50 feet from regulated wetlands. Due to the particularly small lot size, it would not be possible to construct a garage that sat 50+ feet away. The average distance from the wetlands for the new garage is no closer than that of the existing garage.

**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.**

On the east side of Bob White Beach Blvd, where the houses' garages are located, others enjoy having a 2-car (or larger) garage, with depth and storage for watercraft, etc.

While it is true our property currently has a 2-car garage, it's made of old rotted logs, dilapidated, and is subject to wind, rain, and snow getting in. When we purchased the home in 2019, we did sand, paint and repair the garage as much as possible, but it remains unsafe to park cars inside and as such, is only being used as a very large storage shed. As a result, we are unable to enjoy the benefit of having a garage which is customary for the neighborhood.

Nearby properties have built garages which are 40+ feet in depth to accommodate storing boats on trailers. For example, the direct neighboring garages on both the left and right side of us are approximately 47 and 41 feet deep, respectively. Our replacement is less, at 35 feet. Even when encroaching the front setback by 10 feet, its distance to the paved street will be comparable to that of these neighboring garages.

During the off-season, our property's driveway has historically allowed for an unobtrusive placement of a pontoon boat. This is how we have stored it for the past year, as well as the prior owner for at least two decades. However, given the discovery that up to 23 feet of our driveway is government property since it's classified as being a road, it would not be right to continue storing it in such a manner, as it should be clearly and comfortably be on our property. Therefore, it is particularly important that we have adequate depth in our garage, similar to our adjacent neighbors, so we have the ability to store a pontoon inside. Furthermore, we want to respect the line of site for road traffic and neighbors backing out of their driveways.

**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 granting of such variance will be an improvement to the public welfare, as well as neighboring properties.

The existing garage sits barely 2 feet from the southern property line. The new garage abides by the 10 foot required setbacks on both sides. Hence, it conforms to current standards and eliminates the crowding next to my neighbor's garage.

Wetland protection has been thoughtfully considered. Gutters will be used on the roof with downspout runoff designed to flow away from the direction of the wetlands. On the existing garage, at its closest point which is its southern corner, the distance is 15.8 feet from wetlands. The average distance for the new garage is no closer than that. Much of it is at a greater distance than 15.8 feet – up to approximately 35 feet away from wetlands, at its northern corner.

Jeff Pierce is the Environmental Quality Analyst assigned to our region from the Michigan Department of Environment, Great Lakes, and Energy (EGLE). He reviewed our wetland delineation report, as well as the site plot showing the locations of the existing and proposed garages. He said this plan "would not have direct impacts on the wetland." His letter is attached.

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

Dating back to the prior owners, the existing garage has long been a running joke with neighbors because it is an eyesore that does not even remotely match the styling of the associated house, or any neighboring houses. The Master Plan Community Goals state Waterfront Residential parcels "*should maintain their existing character and setbacks from the lakes.*"

The new garage has been designed to match the existing character and styling of the associated house. This beautifies the neighborhood. Furthermore, since only other garages are found on this side of the road, no houses will have view corridors affected. Since the lake is on the opposite side of the road, with a house between the lake and the road, the garage does not affect lake setbacks, or any aesthetic characteristics of the coastline when viewed from the water.

**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 unique situation specific to this address, as the neighbors' garages to the left and right, as well as along this southern portion of Bob White Beach, have deeper pieces of land for their garages. As such, there is more flexibility in placement.

As you can see, the back of our lot was carved out for an unusual U-shaped lot which abuts the back of it. On a related note, this U-shaped lot is wetlands and does not have a house on it. There is a garage, but it's on the other end of the U, where you see the number 100.

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

With the granting of the variance, the use of the property does not change. It remains a Single Family Residence with detached 2-car garage.

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

A 15 foot front yard setback is a reasonable deviation from 25 foot considering the unusually small lot size (50 x 90 feet), the parallelogram shape, and the fact that there is an additional 21 to 23 feet of open space in front of the lot, before the paved road. The partial encroachment of the 50-foot wetlands setback as required by ordinance is reasonable, given that its average distance to the wetlands is no closer than that of the existing garage.

Planning & Zoning Administrator Steffens stated that the subject site is a 0.26-acre parcel. Strawberry Lake is to the west; single-family dwellings and associated accessory structures are located to the north, south, and east. Bob White Beach Boulevard traverses the site and the eastern portion of the site is the subject area. If approved, the variance request would allow for the construction of a two-story, 1,010-square foot accessory structure, with a building height of 16 feet, 9 inches. The structure would have a 15-foot front yard setback from Bob White Beach Boulevard, where a 25-foot front yard setback would be required, and a 15.3-foot setback from a regulated wetland, where a 50-foot setback would be required. The subject area is developed with a 450-square foot garage with a 15.8-foot setback from the wetlands, a two-foot south side yard setback, and a 34-foot front yard setback. Section 9.9.3 of the Hamburg Township Zoning Ordinance requires a 50-foot setback from the boundary 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 features and or mitigation of the natural features. 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. The applicant did submit a wetlands delineation report and forwarded to EGLE's Water Resources Division for comment. Exhibit B is an email exchange between the property owner and EGLE. The site is very flat and there would be minimal grading at the building envelope. She would strike the notion that a grading plan be required. If there was to be topographical changes or a considerable amount of grading, she would suggest that be a course of action that the ZBA should take. Any variance granted as a result of this request will apply to the identified boundary of the wetlands as indicated in the wetland delineation report.

Steffens reviewed the staff's response to the seven findings of fact. She stated that the subject area is 50 feet wide at the street and 90 feet deep from west to east. Regulated wetlands encroach into the eastern portion of the site, placing the required wetland setback approximately 21 feet from the front property boundary. The structure also would require a 25-foot front yard setback from the front property boundary. Staff provided a drawing that illustrates the wetlands setback in red, the front setback in green, and the overlapping setbacks in yellow. There is no compliant location on this portion of the parcel to construct a structure of any size. The 50-foot regulated wetlands setback requirement applies generally to all properties in Hamburg Township. 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 constructing an accessory structure within all required setbacks. However, the size of the proposed structure could be reduced in size to further reduce the variance request. 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. The wetlands and front yard setback requirements result in no compliant building envelope for any sized accessory structure. While the proposed accessory structure is a customary and reasonable residential use, approval of the variance request does not preserve or advance property rights as the parcel is developed for its zoned and intended use of single-family residential. The parcels to the south north are improved with accessory structures, and the parcel to the east is regulated wetlands. It is not likely that the reduced front yard setback will be aesthetically impactful to the adjacent properties because there is a considerable road easement between the traveled roadway and the property boundary. She read an excerpt from the current Hamburg

Township Master Plan, Natural Resources Management Strategies chapter. 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. The ZBA should consider requiring the property owner to either create a recorded conservation easement for the portion of wetlands on the parcel or construct a physical or vegetative barrier to further limit encroachment into the wetlands. EAGL permit is not required because they found that there would be no direct impact to the wetlands. It is fairly vegetated at the setback, a natural vegetation berm, but it is mostly scrub material. The applicant suggested that he leave that buffer, however her preference would be to have a physical barrier installed, possibly a short fence to keep foot traffic or lawn mower from accidentally trampling the wetlands. A conservation easement is another option, but given the smaller size of the wetlands, it may not be the best option. Staff is recommending a physical barrier along the length of the structure. Because of the wetland encroachment on the property, the request for the variance is not of so general or recurrent a nature. The site is zoned for single-family residential and the proposed variance would not permit the establishment of a use not permitted by right within the district. As discussed under standard number four, 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 to be used for single-family residential uses. The ZBA should balance the ecological importance of the wetlands, impact of the structure on the wetlands, and the property rights of the applicant. Requesting that the accessory structure be reduced in size to provide a greater wetlands setback, placing the wetlands into a recorded conservation easement, or creating a physical barrier to the wetlands would be appropriate conditions of approval.

Chairperson Priebe opened the public hearing.

Robert Siebert of 10884 Bob White Beach stated that the existing garage is ready to fall down. It is an eyesore. Their boat sits in front of it which blocks the site distance from the road. The new garage would be better for the neighborhood.

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

Motion by Watson, supported by Dolan

To approve variance application ZBA 20-008 at 10910 Bob White Beach Boulevard to permit the construction of a 1,010-square foot accessory structure with a 15-foot front yard setback (25- foot front yard setback required, Section 8.3.) and a 15.3-foot setback from a regulated wetlands (50-foot setback from a regulated wetland required, Section 9.9.3.B.), as shown on the plans file dated June 17, 2020 and the wetlands identification report file dated June 2, 2020. Variance approval is granted based on the following condition: Construct a physical barrier along the wetlands to preserve the wetland from further encroachment by lawn equipment or any other trampling of the area. The variance does meet standards one through seven of Section 6.5. of the Township Ordinance and a practical difficulty does exist on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at tonight's meeting and as presented in the staff report. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

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

b) ZBA 20-009

Owner: Linda Lee Lamb

Location: 8633 Country Club Drive Pinckney, MI 48169

Parcel ID: 15-17-404-006

Request: Variance application to permit the construction of a ten-foot by thirty-foot patio structure with up to a one-foot south side yard setback (five-foot south side yard setback required, Section 8.18.1).

Ms. Lamb, applicant, stated that the lot is quite small with only 10 feet to the property line. She would like to install a patio to place her grill, etc. The property next to hers is very small, and she does not think that anyone would be able to build a house on it.

Planning & Zoning Administrator Steffens stated that the subject site is an approximately 6,400-square foot property that fronts on Country Club Drive to the west. An existing single-story, single-family dwelling with an attached garage is located on the site, with a combined footprint of approximately 1,540 square feet. Single-family dwellings are located to the north, east, south, and west of the site. According to a February 28, 2019 email from Jeff Pierce with EGLE, wetlands are not present on the site. Based on the maps that we receive from Livingston County, there are wetlands on the site, but Jeff Pierce confirmed there were no regulated wetlands. If approved, the variance request would permit the construction of a ten-foot by thirty-foot patio structure with up to a one-foot south side yard setback where a five-foot south side yard setback required per Section 8.18.1. Staff issued a Land Use Permit for the construction of the existing single-family dwelling and attached garage on May 1, 2019. The plans approved for that permit include a proposed five-foot by thirty-foot patio structure in the same location as the proposed ten-foot by thirty-foot patio structure that is the subject of this variance request. It appears that the approved five-foot by thirty-foot patio structure was never constructed. The applicant formally applied for the variance before you this evening on July 08, 2020. In her application, she cites a desire "to have a patio next to the kitchen," and wanting to provide "an outdoor eating area in an otherwise unused area" as reasons for granting the variance request. Since an existing sliding door on the south wall of the house would provide access to the proposed patio, the chosen location is logical. The site plan dated June 26, 2020 submitted for this variance request shows a proposed drainage system that should ensure that any additional stormwater runoff generated on-site by the proposed patio would be managed on-site. That drainage plan was requested by the builder prior to the Township signing off on the final Certificate of Occupancy. Given the amount of fill brought onto the site and the slope onto adjacent properties, we were concerned that the drainage would not be managed on site. We requested that the builder submit a grading and drainage plan. She suggested that the engineer who did the drainage plan show the drainage contemplating the patio. He proposed and installed a detention in the rear yard as well as a PVC pipe running along the south property boundary and then a small berm on the north property boundary and has provided an as-built. The engineer was confident that the way that the site had been graded along with the other storm water controls would prevent flow onto the neighboring properties. Drainage in Michigan is a civil matter, however we do try to ward off any potential problems when there is an active land use permit.

Steffens discussed the seven findings of fact. She stated that the five-foot side yard setback required for patio structures under Section 8.18.1 of the Zoning Ordinance applies generally to all properties in the WFR District and Township-wide rather than just the subject site. However, the subject site is exceptionally narrow with an average lot width of just 42.5 feet. In addition, the existing dwelling is sited approximately ten feet from the south property line in compliance with the setback requirements of Section 7.6.1 of the Zoning Ordinance. As a result, the buildable area for a patio structure along the south side of the dwelling is just five-feet in width, which limits the usability of the structure. Nevertheless, Staff issued a Land Use Permit on May 1, 2019 for the existing dwelling on the subject site with a compliant five-foot by thirty-foot patio structure proposed in the same location as the proposed ten-foot by thirty-foot patio structure that is the subject of this variance request. The need for the variance is driven by the preference for a larger patio. However, it is staff's position that the patio function is essentially the same as a lawn. The concern here would be the run-off. Had we not had the as-builts from the engineer certifying that the storm water controls would be adequate for this size patio, it would be a greater concern. There are several locations on the subject site where a compliant and usable patio structure could be constructed, and thus granting a variance to allow a noncompliant patio structure in a particular location is not necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity. However, a compliant patio structure along the south side of the existing dwelling in particular would be limited in terms of usability in light of the required five-foot setback, narrow lot width, and location of the existing dwelling. The primary concern with regard to the addition of impermeable surface in a required yard setback by constructing the patio structure is increased stormwater runoff onto property adjoining the subject site. So long as the applicant constructs the drainage system for the patio structure in accordance with the site plan dated June 26, 2020, submitted for the subject variance request, which they have done, granting of the variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the zone or district in which the property is located. The subject site is within the West Hamburg/Rush Lake planning area of the Master Plan, which envisions medium-density residential,

commercial, and public land uses which enhance the Rush Lake area as a secondary center of community activity. In addition, the subject site is classified as High Density Single Family Residential (one dwelling unit per quarter-acre) on the Future Land Use Map. Because the variance request is not based upon an increase in residential density, but rather the addition of a patio structure, granting the request will not adversely affect the purpose or objectives of the Master Plan. The condition or situation of the subject property for which the variance is sought is not of so general or recurrent nature in light of the subject site's exceptionally narrow average lot width of 42.5 feet. In addition, no other variances have been requested for the subject property. This is an at-grade patio. The use of the subject 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 patio structure will not change the present use. With the construction of the dwelling and garage, reasonable use of the land is already permitted. In addition, a complaint patio structure can be constructed along the south side of the dwelling, despite the required five-foot south side yard setback, as evidenced by the applicant's plans, the Township issued a Land Use Permit on May 1, 2019 for the existing dwelling on the subject site with a proposed five-foot by thirty-foot patio structure meeting the required five-foot south side yard setback. Nevertheless, a patio just five feet in width would be limited in terms of its usability.

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

It was stated that if it were a raised patio, it may be a larger concern. It was stated that there is a practical difficulty on the property.

Motion by Dolan, supported by Watson

To approve variance application ZBA 20-0009 at 8633 Country Club Drive to permit the construction of a ten-foot by thirty-foot patio structure with up to a one-foot south side yard setback (five-foot south side yard setback required, Section 8.18.1). Variance approval is granted based on the fact that there is a storm water management system exists on the property. The variance meets variance standards one (1) through seven (7) of Section 6.5 of the Hamburg Township Zoning Ordinance, and a practical difficulty exists on the subject site when strict compliance with the Zoning Ordinance standards is applied, as discussed at the meeting this evening and as presented in this staff report. The Board directs Staff to prepare a memorialization of the ZBA's findings for the request

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

c) ZBA 20-010

Owner: Phillip Hatfield

Location: 3840 Langley Drive Pinckney, MI 48169

Parcel ID: 15-29-202-030

Request: Variance application to permit the addition of a twelve-foot by twenty-three foot attached accessory structure to the west facade of the existing dwelling, with up to a three-foot aggregate side yard setback (fifteen-foot aggregate side yard setback required, Section 7.6.1.fn4).

Mr. Hatfield, applicant, stated that this is going to be their retirement home, and they are looking to have a garage with attic storage. They will be re-siding the house as well as the garage. The lot is very narrow and there is no other place to put it. They are looking to build it to the width of their driveway. At some point, there had been a carport which is no longer there. The house has neither an attic nor a basement, therefore there is very little storage.

Planning & Zoning Administrator Steffens stated that the subject site is a very small, approximately 3,480-square foot property that fronts on Langley Drive to the north and Cordley Lake to the south. An existing single-family dwelling and detached accessory structure are located on the site, with a combined footprint of approximately 987 square feet. Single-family dwellings are located to the north, east, and west of the site. If approved, the variance request would permit the addition of a twelve-foot by twenty-three foot attached accessory structure to the west facade of the existing dwelling, with up to a three-foot aggregate side yard setback where a fifteen-foot aggregate side yard setback required, per Section 7.6.1.fn4. As you can see in the provided site plan, the existing dwelling encroaches upon the subject site's

property lines. The lot to the east onto which the dwelling encroaches is a common use lot. According to assessing records, the dwelling was constructed in 1950, which predates the current Zoning Ordinance. Staff found a 2002 real property settlement agreement that addresses the dwelling encroachment in which the subdivision agreed to permit the encroached-upon portion of the common lot for continued use and occupancy by the property owner. Staff then consulted with the Township Attorney as to whether such agreement precludes the proposed expansion sought via this variance request. After researching the issue, the Attorney found that the agreement does not preclude the proposed expansion or the issuance of land use permits by the Township.

Steffens discussed the seven findings of fact. She stated that the fifteen-foot aggregate side yard setback required for the proposed structure under Section 7.6.1.fn4 of the Zoning Ordinance applies to all parcels sixty feet or less in width in the WFR District rather than just the subject site. However, the subject site is exceptionally narrow with an average lot width of approximately forty feet. The subject site is also exceptionally shallow with an average lot depth of 97.4 feet. In addition, the existing dwelling is oddly sited such that it is angled significantly towards the west, encroaching upon the east property line. The west side yard setback for the existing dwelling is conforming but does not leave much room for a usable garage, especially in light of the angled position of the dwelling. As a result, the buildable area for a compliant attached garage of any usable dimensions on the subject site is extraordinarily constrained, especially with regard to meeting the west side yard setback. Nevertheless, it appears that the applicant could slightly shorten and/or shift the garage to the south so as to slightly reduce the proposed encroachment into the required fifteen-foot aggregate side yard setback. The variance preserves a substantial property right possessed by other property in the same zone and vicinity; in this case, the right to construct a compliant attached accessory structure in a district in which it is customarily permitted, the WFR District. Several properties in the same zone and vicinity as the subject site have a single-car garage, and several properties in the immediate neighborhood have attached garages as well. The exceptionally short lot width and depth of the subject site, as well as the angled position of the existing dwelling, make constructing an attached accessory structure that is both usable and compliant with the Zoning Ordinance difficult. Nevertheless, it appears that the applicant could slightly shorten and/or shift the garage to the south so as to slightly reduce the proposed encroachment into the required fifteen-foot aggregate side yard setback. The proposed attached garage is designed to integrate seamlessly with the existing dwelling and will be compatible with surrounding properties in the WFR District. The scale of the proposed garage is appropriate to the existing dwelling and does not appear to create a foreseeable potential for significant obstruction of views or ingress and egress. So long as all additional stormwater runoff from the proposed garage is managed on-site, granting of the variance will not be materially detrimental to the public welfare or materially injurious to the property or improvements in the zone or district in which the property is located. The subject site is within the North Chain of Lakes planning area of the Master Plan, which will continue largely as residential areas very closely tied to lake waterfronts. The subject site would continue to be compatible with such pattern. In addition, the subject site is classified as Waterfront Residential. The condition or situation of the subject property for which the variance is sought is not of so general or recurrent a nature in light of the subject site's exceptionally narrow forty-foot average lot width, exceptionally shallow 97.4-foot average lot depth, and the angled position of the existing dwelling. The use of the subject site is presently single-family residential, which is a use permitted by right in the WFR District in which it is located, and granting a variance to permit the construction of an attached accessory structure will not change the present use. At 276 square feet, the proposed garage is appropriately sized to be usable for a variety of vehicle types. The proposed garage's dimensions are not excessive but the minimum necessary to accommodate a larger vehicle. Nevertheless, it appears that the applicant could slightly shorten and/or shift the garage to the south so as to slightly reduce the proposed encroachment into the required fifteen-foot aggregate side yard setback.

Discussion was held on the location of the existing shed. Mr. Hatfield stated that it is approximately three feet back from the house. Discussion was held on the pitch of the roof of the garage.

The question was asked why the garage could not be shifted to the south. Mr. Hatfield stated that they would not be able to match the pitch of the roof to the house.

Chairperson Priebe opened the public hearing.

Chairperson Priebe stated that we received a hand-written note, although it does not say who it is from, indicating that as a resident of Langley Drive, they object to the variance as leaving only a three foot setback is not enough. Setback requirements are there for obvious reasons, please adhere to them.

Hearing no further public comment, the public hearing was closed.

Motion by Rill, supported by Diepenhorst

To approve variance application ZBA 20-0010 at 3840 Langley Drive to permit the addition of a twelve-foot by twenty-three-foot attached accessory structure to the west facade of the existing dwelling, with up to a three-foot aggregate side yard setback (fifteen-foot aggregate side yard setback required, Section 7.6.1.fn4) The variance meets variance standards one (1) through seven (7) of Section 6.5 of the Hamburg Township Zoning Ordinance, and a practical difficulty exists on the subject site when strict compliance with the Zoning Ordinance standards is applied, as discussed at the meeting this evening and as presented in this staff report. The Board directs Staff to prepare a memorialization of the ZBA's findings for the request.

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

d) ZBA 20-011

Owner: Mark S. Ramsey IV

Location: 8424 Hillpoint Drive Brighton MI 48116

Parcel ID: 15-13-102-068

Request: Variance application to allow a land division of parcel 15-13-102-068 to create lot A with a lot size of 0.33 acres and lot B with a lot size of 0.25 acres (one acre minimum lot size required in the waterfront residential zoning district per Section 7.6.1.).

Mr. Ramsey, applicant, stated that he is attempting to finalize an application that was originally made in 2007. The survey was completed and they are ready to move forward. He thought that he was ready to finalize the split only to find out that it does not meet the new ordinance. Since that time, they purchased the property on the water for the purpose of building a new home.

Planning & Zoning Administrator Steffens stated that this is the first time since she started with the Township that the ZBA has heard a request for a land division. The applicant would like to split the existing developed, 25,487 square foot, parcel 15-13-102-068 at 8425 Hillpoint Drive into two lots. Lot A would be 14,627 square feet and would contain the existing house and Lot B would be 10,990 square feet and would be vacant. The applicant currently owns the subject property at 8424 Hillpoint Drive and the property to the east across Hillpoint Drive at 8417 Hillpoint Drive. The applicant has indicated to staff that the intent is to construct a garage on Lot B to accompany the house owned at 8417 Hillpoint Drive. In 2007 the applicant combined 6 parcels into the existing single parcel at 8424 Hillpoint Drive. We see people combine parcels all the time for a couple of reasons. Either they combine two parcels to build a larger home or their parcels may be included in a special assessment district. We now have a legal description that encompasses all of the parcels under one parcel number. You have to meet the zoning standards in order to split. Our attorney has advised us that we cannot subdivide or split the parcels into their original configuration. We would have to split the lot in order to meet the Township's zoning requirements for size and minimum road frontage. In 2007, incorrectly the split went to the Township Board who then approved it. However, you cannot split a parcel without having all of the taxes paid. In 2007 there were some taxes that were not completely up to date on some of those parcels so the Township was not able to complete the split. Mr. Ramsey did not realize that the split was nullified because of the outstanding tax issue. We are now in a position that we cannot approve the split because it does not meet the WFR zone requirements for lot size. The Land Division Act states that when you create a lot, the municipality's minimum standards have to be met. The Township's Ordinance #95A addresses land divisions, combinations and boundary adjustments. The Land Division Act does not address boundary adjustments or combinations, only splits. We like the combinations, particularly on the smaller WFR lots, because we are getting to what the Township has adopted as the minimum lot size of one acre. However, Ordinance 95A does address

combinations and boundary adjustments, and there are a number of standards that must be met. We look at a number of issues so that we do not create a site that is not buildable.

The question was asked if an accessory structure could be built alone on a lot. Steffens explained that it is allowed in one instance, which is if you have a waterfront lot and a lot within 66 feet, then it is allowable to build an accessory structure up to 800 square feet if there is common ownership.

Steffens stated that Mr. Ramsey is attempting to create a lot that does not meet the one acre standard. In fact, he is creating two lots that do not meet the standards.

Steffens reviewed the seven findings of fact. She stated that there is no exceptional or extraordinary circumstance or condition applicable to the property involved that does not apply generally to other properties in the same district. The minimum lot size in the WFR district is one acre. However  $\frac{3}{4}$  of the platted WFR subdivisions were platted in the 1920s and 1930s. Platting of lots is much different than the creation of a new lot under the LDA. If the Planning Commission allowed the 25,487 sq. ft. subject site to be divided into two smaller lots, both less than the allowed lot size of 43,560 square feet in the zoning district, what would be the reason to not allow land divisions that do not meet the lot size on all lots in the zoning district? The lot size of one acre has been in the Zoning Ordinance for decades. However, a lot line adjustment could be permitted that would create Lot A, with the existing house, and combine Lot B with the parcel owned by the applicant to the east. The lot line adjustment would increase the non-conformity of Lot A but it would decrease the non-conformity of 8417 Hillpoint which is the waterfront lot. We would not be splitting off another lot, but taking some square footage and transferring it to the water side. We would be transferring the non-conformity from one lot to the other. The owner of the subject property is allowed to develop their existing property under the WFR regulations the same as all other properties in the same zone and vicinity. If a land division was allowed it would allow the property owner to develop two nonconforming properties in the WFR zoning district instead of one. This would allow this property owner twice the development as other properties in the same zone and vicinity. Staff recommends that if the ZBA grants approval to request that a lot line adjustment be required. Dividing the existing non-conforming lot into two smaller non-conforming lots would allow Lot B to be developed with any of the allowed uses in the WFR zoning district. The property owners have stated that they would like to build a garage on this lot for their other property at 8417 Hillpoint Drive. This would be an allowed use of this new lot under section 8.3.10 of the zoning regulations because the properties would be within 66 feet of each other and the project could meet the other regulations under this section. The future land use map for this property is High Density Residential which would allow for properties to be as small as  $\frac{1}{4}$  of an acre. However some of the goals of the master plan are to protect, preserve, and enhance whenever possible the unique and desirable natural amenities of Hamburg Township; preserve the natural and historic character of Hamburg Township by accommodating a reasonable amount of development, but ensuring the development is in harmony with the natural features and the unique environmental requirements of the Township. Because of this lot's proximity to the lake and the small size of the existing site, future divisions of this property for development would not appear to preserve or be in harmony with the natural features and unique environmental requirements of the Township. A lot line adjustment would not create a non-conforming parcel would be essentially transfer a non-conformity from 8417 Hillpoint to 8424 Hillpoint. It appears that allowing a land division of an already non-conforming lots of 25,487 square feet in the WFR zoning district may be very general and recurrent in nature as many of the lots in the WFR zoning district are smaller than the required 43,560 sq. ft. minimum lot size. The uses allowed on the lots would be the same as the current uses allowed in the WFR zoning district. However, this single legal non-conforming site would be able to have twice as many of these allowed uses if the ZBA allows the property to be divided into two even more non-conforming sites. Permitting the lot line adjustment, however, assuages the concerns regarding over development of the waterfront district and would permit the property owner to develop both Lot A, Lot B, and 8417 Hillpoint in full compliance with the zoning ordinance. The existing property may be developed with all the uses allowed in the WFR zoning district as long as all the regulations can be met. Therefore, the property as it exists today allows for reasonable use of the land.

The question was asked when the request for the split appeared before the Township Board. Steffens stated that it was in 2007, the same year as the combination of the lots. The split was not realized because of unpaid taxes.

Discussion was held on the location of the two houses. Steffens stated that the houses do not need to line up, they just need to have common frontage.

The question was asked if the taxes are current. Steffens stated that she is not sure.

Member Dolan stated that he has a problem with creating a non-conformity, but he also has a problem with the Township not notifying the applicant that the split was not complete in 2007.

Chairperson Priebe stated that she would be afraid of the precedent that would be set by creating two non-conforming lots.

The question was asked if the split is strictly so that a garage can be built. Mr. Ramsey stated that he has a mortgage on both properties and he needs the split in order to make the financing work. The adjustment is a step in the right direction, but it still leaves a large hurdle to get over for the financing. It was stated that is not something that the Board can consider when making a decision. Mr. Ramsey stated that he has no other plans other than a garage for that property.

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

Member Dolan again reiterated that the Township Board previously took action on this, however the applicant was never informed that the split did not occur. He stated that he is concerned about setting precedent. Steffens stated that in looking at minutes where the Board took action on splits, it was always done with the condition that taxes are paid.

Motion by Dolan, supported by Rill

To approve variance application ZBA 20-001 at 8424 Hillpoint Drive (TID 15-13-102- 068) to allow the lot line adjustment between 15-13-102-068 and 15-13-103-084, as indicated in the staff report, and permitting Lot A to have a lot size of 14,627 square feet. Variance does meet standards one through seven of Section 6.5. of the Township's 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 contingent upon all property taxes being paid, and, that the record reflect that the ZBA was made aware that the Township Board approved action in 2007 allowing for a split of the subject property which did not occur due to unpaid property taxes. The Board directs staff to prepare a memorialization of the ZBA findings for the project

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

#### **8. New/Old business**

- a) Approval of July 8 and July 27, 2020 minutes

Motion by Dolan, supported by Diepenhorst

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

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

Motion by Rill, supported by Watson

To approve the minutes of the July 27, 2020 special meeting as written

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

b) Memo of findings

Planning & Zoning Administrator Steffens stated that August 18, 2020 at the 7:00 p.m. Township Board meeting, the Board will be finalizing the Master Plan. Member Rill asked if the one-acre requirement was adjusted down in the Master Plan. Steffens stated that it was not. She further stated that she would like to thank Chairperson Priebe for serving on the Steering Committee for that Master Plan.

Member Dolan stated that he would like to commend Amy Steffens for the great presentation this evening, especially the last case. She made it very clear and easy for the Board to understand.

**9. Adjournment:**

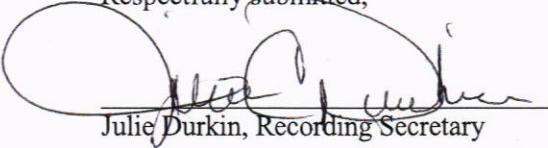
Motion by Dolan, supported by Rill

To adjourn the meeting

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

The meeting was adjourned at 8:40 p.m.

Respectfully submitted,

  
Julie Durkin, Recording Secretary

The minutes were approved as presented/corrected: 9-9-20

  
Chairperson Priebe