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Treasurer: Jason Negri
Trustees: Bill Hahn
Annette Koeble
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Patricia Hughes

**Hamburg Township
Zoning Board of Appeals Minutes
Wednesday, March 10, 2021
Virtual Meeting using GoToMeeting platform
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, calling in from Hamburg Township, Livingston County
Negri, calling in from Hamburg Township, Livingston County
Priebe, calling in from Hamburg Township, Livingston County
Rill, calling in from Hamburg Township Livingston County,
Watson, calling in from Hamburg Township, Livingston County

Absent: None

Also Present: Amy Steffens, Planning & Zoning Administrator & Brittany Stein, Zoning Coordinator

4. Correspondence: None

5. Approval of Agenda:

Motion by Negri, supported by Rill

To approve the agenda as presented

Roll Call Vote: Auxier - Yes
Negri - Yes
Priebe - Yes
Rill - Yes
Watson - Yes

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 2021-0003
Owner: Jessica Fister
Location: 10331 Strawberry Lane, Pinckney MI 48169
Parcel ID: 15-28-202-007

Request: Variance application to permit an elevated deck on the east façade with a 3.5-foot setback from the north side yard setback (8-foot setback required, Section 8.18.2.), and a 34-foot setback from the OHM of Strawberry Lake (44-foot OHM setback required, Sections 7.6.1.fn 4 and 8.18.2.).

The applicant stated that they purchased the home in 2020. It had an old, rotted deck. They consulted with various contractors who indicated that if they were just replacing some boards, they would not need a permit. They did the work and later found out that the permits were required.

Brittany Stein, Zoning Coordinator, stated that the subject site is a narrow 10,000 square foot site that fronts onto Strawberry Lane to the west and Strawberry Lake to the east. Single-family dwellings are located to the north, south, and west. The site is improved with an existing 1,500-square foot dwelling and a 400-square foot detached garage. If approved, the variance request would permit an elevated deck on the east façade with a 3.5-foot setback from the north side yard setback where an 8-foot setback is required and a 34-foot setback from the OHM of Strawberry Lake where a 44-foot OHM setback is required. She stated that the deck was already there and was done without permits. After it was brought to the zoning department's attention that a new expanded deck had been constructed without permits at the property, the current property owner had been sent a code violation warning letter to obtain valid permits for the deck. When applying for the land use permit, the requirements for a deck were provided. The plans showed the work entailed widening the deck by approximately 3 feet so the existing side steps could be rebuilt and turned to line up with the existing walkway along the side of the house, and add an additional 4.5 feet to the back, as well as replacing rotted top boards and hand rails on the wood deck. This deck is approximately 30 inches above the existing grade. Anything higher than 24 inches off the ground can only encroach into a required yard setback a maximum of 6 feet. Therefore, the setback from the water is 44 feet. On the side, the ordinance requires that it be no closer than 8 feet from the side lot line. She discussed the Standards of Review. She stated that an elevated deck is defined as a platform elevated over 24 inches in height above grade at any point, no part of which is roofed, which is more than five (5) feet in any horizontal direction. An elevated deck may be cantilevered from the building or attached to the ground. The eight-foot side yard setback required for elevated structures under section 8.18.2 and the 44-foot ordinary high water mark setback per section 7.6.1.fn 4 of the Zoning Ordinance applies generally to all properties in the WFR District and Township-wide. However, the subject site is exceptionally narrow with an average lot width of just 40 feet. Because the existing rear exterior door on main floor of the dwelling is elevated over 24 inches above the grade, this results in the necessity to construct an elevated deck to access the rear yard area. A compliant elevated deck in this location may be no larger than 4.5 feet in length by 20.5 feet wide. According to the Zoning Ordinance, an at-grade deck may be as close to any property line as 5 feet. Although an at-grade deck would be permitted, there is minimal impact by the constructed deck, just because it is more than 24 inches above grade. Granting this variance request is not necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity, as an at grade deck or patio could be built on the subject site without the requirement of a variance to the setback regulations. However, the nominal impact of the constructed deck slightly higher than 24 inches above the grade within the setbacks could be considered a minor deviation from the ordinance. The use of the deck will be similar to that of an at-grade patio or deck. The elevated deck and steps will have minimal impact to the public welfare and will not be materially injurious to the property nor other surrounding properties. The subject site is a waterfront lot on Strawberry Lake. Parcels in this area are primarily residential and zoned in the waterfront residential district. The master plan recommends setback standards be preserved on waterfront lots. This variance request will not 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 40 feet. 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. Granting a variance to permit an elevated deck structure will not change the present use. With the dwelling and garage currently existing on the property, reasonable use of the land has been permitted. Prior to the construction of the new deck, the previous deck was just 10 feet by 20 feet. The existing deck was non-conforming to the Zoning Ordinance before because it still was not meeting the required 44-foot setback from the lake. However, adding an additional 4.5 feet to the deck and adding steps to access the side yard of the property has minimal impact and is a reasonable use of the land.

Member Negri stated that he is most concerned about the encroachment on the north side of the house. The requirement is only 8 feet and they are requesting 3.5 feet which is significant. He asked if the property to the north is

a walkway easement. Stein stated that there is a 10 foot easement between the two properties. The house next door is also close to the lot line, which would also be non-conforming not meeting the setback.

Chairperson Priebe opened the hearing to the public for this request.

Mr. Kevin Davis of 10337 Strawberry Lane stated that he and his wife own the property adjacent to the subject site. He stated that they agree with the improvement to the deck. The old wood railing blocked a lot of the view of the lake to the west. The new railing allows them to see through it.

Hearing no further response, the call was closed.

Chairperson Priebe stated that she does not have a problem with the setback from the water due to the irregular shape of the property at that point. The easement also poses a restraint on them as well.

Member Auxier stated that he looked at the easement and wanted to make sure that the deck was not encroaching the neighbor's view looking to the right, but the easement enhances both of their properties, and the deck does not look out of place. He has no issue with the request.

Member Rill stated that he has no issue with the way it has been done, and it is very attractive.

Negri stated that he does not have an issue with the encroachments, but he questions the timeline and not going through the permit channels. He further questioned the precedent that it would set to simply approve this that had already taken place. However, if they had gone through the proper process, he would still be in favor of it because of the reasons stated. Chairperson Priebe stated that this does happen and there are fees and penalties involved. Negri stated that he is concerned about approving something after the fact simply because we don't want them to have to go through the difficulty of tearing down something already built. Chairperson Priebe stated that it has recently happened where someone did have to remove something that was already built. Further discussion was held on the role of the ZBA and the decisions not being made based on precedent, but rather its own merits. Amy Steffens, Planning & Zoning Administrator, explained the after-the-fact fees and the enforcement process. She stated that just because a project has been constructed, does not mean that there is now a practical difficulty on the property. The Board is obligated to look at the seven findings of fact and determine whether or not the project meets them. She further discussed the non-conforming ordinance and the findings that the Board is required to determine.

Motion by Auxier, supported by Rill

To approve variance application ZBA 21-0003 to permit an elevated deck on the east façade with a 3.5-foot setback from the north side yard setback (8-foot setback required, Section 8.18.2.), and a 34-foot setback from the OHM of Strawberry Lake (44-foot OHM setback required, Sections 7.6.1.fn 4 and 8.18.2.). The variances do meet variance standards one through seven 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.

Roll Call Vote: Auxier - Yes
Negri - Yes
Priebe - Yes
Rill - Yes
Watson - Yes

MOTION CARRIED

8. New/Old business: None

Amy Steffens, Planning & Zoning Administrator, stated that we will have the minutes from the last meeting at next month's meeting.

Member Auxier discussed the process of staff being able to make administrative decisions. He stated that he feels that this is an example of one that should have been allowed as an administrative decision. Steffens stated that we would have to change the Zoning Ordinance, and it is a "slippery slope", especially for the Zoning Administrator to have any discretion. In fact, we are looking at a zoning text amendment to remove the one area of the ordinance where the Zoning Administrator has discretion. We have a Zoning Ordinance for a reason. We would be setting ourselves up for lawsuits if we are to give one person discretion to deviate from the ordinance. Further discussion was held on the function of the ZBA with members of the community serving. Discussion was held on the number of variances that the Board is approving. Steffens further explained the ZBA being the final stop before a resident can appeal a decision to the courts. It is a quasi-judicial body with a lot of responsibility.

9. Adjournment:

Motion by Negri, supported by Rill

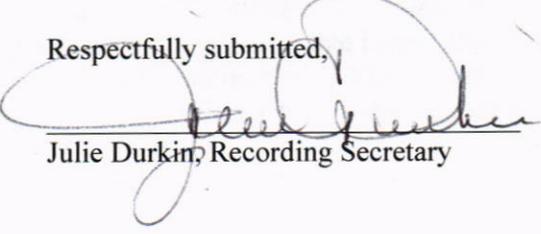
To adjourn the meeting

Roll Call Vote: Auxier - Yes
Negri - Yes
Priebe - Yes
Rill - Yes
Watson - Yes

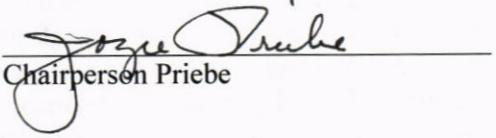
MOTION CARRIED

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

Respectfully submitted,


Julie Durkin, Recording Secretary

The minutes were approved as presented/corrected: 5-12-21


Chairperson Priebe