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**Hamburg Township  
Zoning Board of Appeals  
Hamburg Township Board Room  
Wednesday, May 9, 2018  
7:00 P.M.**

**AGENDA**

- 1. Call to order**
- 2. Pledge to the Flag**
- 3. Roll call of the Board**
- 4. Correspondence**
- 5. Approval of agenda**
- 6. Call to the public**
- 7. Variance requests**
  - a) ZBA 2018-005**

Owner: Daniel and Kristin Hall  
Location: 5150 Redding Drive  
Pinckney MI 48169  
Parcel ID: 15-22-300-047  
Request: Variance application to allow for the construction of a 732-square foot attached garage with a 3.9-foot east front yard setback (15-foot front yard setback required, Section 8.3.2.).
- 8. New/Old business**
  - a) Approval of April 11, 2018 minutes and memorialization of findings for ZBA 18-004
- 9. Adjournment**



# Zoning Board of Appeals Staff Report

## AGENDA ITEM: 7a



**TO:** Zoning Board of Appeals  
(ZBA)

**FROM:** Amy Steffens, AICP

**HEARING DATE:** May 9, 2018

**SUBJECT:** ZBA 18-005

**PROJECT SITE:** 5150 Redding Drive  
TID 15-22-300-047

**APPLICANT/  
OWNER:** Daniel and Kristin Hall

**PROJECT:** Variance application to allow for the construction of a 732-square foot attached garage with a 3.9-foot east front yard setback (15-foot front yard setback required, Section 8.3.2.).

**ZONING:** WFR (waterfront residential district)

### Project Description

The subject site is a 12,763-square foot parcel that fronts onto Redding Drive to the east; Zukey Lake is to the west and single-family dwellings are located to the south, north, and east. The site is currently improved with a 1,248-square foot one-story single-family dwelling. There is a shed located in the front yard that does not comply with the front yard setback standards (Sections 7.6.1. and 8.3.); staff was unable to locate a permit for the placement of the shed. Either the shed needs to be removed from the property or a land use permit application must be made for a compliant location on the site.

If approved, the variance request would allow for the construction of a 732-square foot attached garage that would have a 3.9-foot east front yard setback where a 15-foot front yard setback would

be required per Section 8.3.2. No portion of the existing structure is proposed to be demolished. The existing and proposed setbacks for the structure are noted in the table below.

	Existing	Proposed	Required
East (front)	34 feet	3.9 feet	15 feet (for accessory structure)
West (rear)	>60 feet	>60 feet	50 feet from OHM
North (side)	36 feet	36 feet	10 feet
South (side)	5.4 feet	5.6 feet	5 feet

Based on FEMA's Flood Insurance Rate Map (FIRM), a portion of the site lies within the 100-year floodplain. Any development of this site would require a sealed topographical survey with the base flood elevation noted to the nearest tenth of a foot. Hamburg Township participates in the National Flood Insurance Program (NFIP). Proper enforcement of the building code standards is a prerequisite of the township's participation in the NFIP. In NFIP communities, flood insurance must be purchased as a condition of obtaining a federally insured mortgage in federally identified 100-year floodplain areas. If the location of the proposed garage is found to be in the floodplain, either the top of the garage floor must be at least at or above the base flood elevation or the space must be adequately vented with engineered flood openings.

During a site visit on April 25, 2018, staff observed an area of blight in the front yard which is a violation of General Ordinance 38C. No land use permit may be issued until the blight is removed.

### **Standards of Review**

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

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

There is no exceptional or extraordinary circumstance or condition applicable to the property involved that do not apply generally to other properties in the same district. The existing structure conforms to the zoning ordinance and an accessory structure could be constructed to meet the requirements. The sheer size of the proposed garage is driving the need for the requested variance for a 3.9-foot east front yard setback and is creating the self-imposed practical difficulty. The size of the garage could be either reduced to meet the setback requirements or reduced in size to reduce the scope of the variance request.

Two recently adopted zoning text amendments should be considered by the Board. First, the setback requirements for accessory structures located between the water and the road were recently relaxed to allow for a reduced front yard setback of 15 feet (rather than the 25-foot required front yard setback for the primary structure) and a relaxed side yard setback of

a minimum of five feet with an aggregate of 15 feet (rather than the required 10-foot side yard setback).

The zoning ordinance's non-conforming section (Section 11) was amended in November 2017 to allow the expansion of a non-conforming structure's footprint only if the expansion complies with the zoning requirements. Both the Planning Commission and the Township Board approval recommendations show a deliberate attempt by the township to amortize nonconforming structures by requiring compliance with the setback requirements, not create non-conforming structures where one does not exist. Creating a non-conforming structure would not only be contrary to policy decisions recently made by the township but also would create future development constraints for this parcel.

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

A garage is a customary residential structure. However, creating a non-conforming structure where one does not currently exist does not preserve a substantial property right when the site is zoned for single-family residential uses, has been developed for such uses, and can continue to be used for such use with a conforming structure. A substantial property right is not preserved based on granting a variance for a particular architectural design. The proposed garage could be reduced in size to comply with the setback standards.

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

One of the purposes of zoning ordinance setback requirements is to provide for orderly development of individual properties so that the overall effect is not only aesthetically pleasing but also a safe and organized development pattern for pedestrians, vehicles, and neighboring properties. This portion of Redding Drive has been developed with access easements and non-conforming structures. While the inclination may be to approve the project with a 3.9-foot front yard setback because other structures in the vicinity have been constructed with deficient setbacks, approving the proposed setback would further compound the irregular and disordered development of the property and surrounding vicinity.

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

The subject site is in the North Chain of Lakes planning area of the Master Plan. This area envisions waterfront and natural river district zoning closely tied to the lakes and Huron River. The proposed request would not adversely affect the purpose or objectives of the Master Plan.

**5. That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature.**

There is no condition or situation of the subject site that is not of so general or recurrent a nature that the proposed accessory structure cannot comply with the setback requirements. Zoning text amendments have been recently enacted to address recurrent conditions of waterfront lots that relaxed the standards to allow reduced setbacks and make it easier for lakefront lots to accommodate accessory structures. The proposed garage could be reduced in size to comply with the zoning ordinance. The applicant's findings indicate that the proposed garage is necessary because there is no garage on the property. However, sometime between 2007 and present the attached conforming garage was converted into living space.

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

The use of the site is single-family residential and the proposed variance would not change the use.

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

The size of the proposed structure is what has created the need for the variance and is thus a self-imposed practical difficulty. There is no site-specific condition of the property that warrants a deviation from the ordinance.

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

**Recommendation**

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

**Denial Motion:**

Motion to deny variance application ZBA 18-005 at 5150 Redding Drive to allow for the construction of a 732-square foot attached garage with a 3.9-foot east front yard setback (15-foot front yard setback required, Section 8.3.2.). The variance does not meet variance standards one, two, three, five, or seven of Section 6.5 of the Township Ordinance and a practical difficulty does not exist on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at tonight's hearing and as presented in the staff report. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

**Exhibits**

Exhibit A: Application materials

Exhibit B: site and construction plans (to be included in hard copy of report)

Exhibit C: DPW review



# Hamburg Township

a great place to grow

FAX 810-231-4295  
PHONE 810-231-1000

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

**APPLICATION FOR A ZONING BOARD OF APPEALS (ZBA)  
VARIANCE/INTERPRETATION  
(FEE \$500 plus \$50 each additional)**

1. Date Filed: \_\_\_\_\_
2. Tax ID #: 15-22-300-047 Subdivision: \_\_\_\_\_ Lot No.: \_\_\_\_\_
3. Address of Subject Property: 5150 Redding Dr. Pinckney MI 48169
4. Property Owner: Daniel & Kristin Hall Phone: (H) 517-270-0431  
Email Address: Kritall@umich.edu (W) \_\_\_\_\_  
Street: 706 Illinois Ct. City Tecumseh State MI
5. Appellant (If different than owner): \_\_\_\_\_ Phone: (H) \_\_\_\_\_  
E-mail Address: \_\_\_\_\_ (W) \_\_\_\_\_  
Street: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_
6. Year Property was Acquired: 2014 Zoning District: WFR Flood Plain No
7. Size of Lot: Front 62.5' Rear 81.5' Side 1 175.15' Side 2 149.5' Sq. Ft. ~11480
11. Dimensions of Existing Structure (s) 1st Floor Lake front 51.3x24.4 2nd Floor same Garage NA
12. Dimensions of Proposed Structure (s) 1st Floor NA 2nd Floor NA Garage 30'x24.4'
13. Present Use of Property: Residential
14. Percentage of Existing Structure (s) to be demolished, if any 0 %
15. Has there been any past variances on this property? Yes \_\_\_\_\_ No ✓
16. If so, state case # and resolution of variance application \_\_\_\_\_

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

Minimum yard setback: Variance desired in order to attach new garage to existing house. Minimum front yard to allow setback of 3.9' vs 15' for proposed garage.

18. Please explain how the project meets each of the following standards:

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

*The existing structure (house) to which the garage will be attached is located 5.4' from side 2 property line*

- 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.

*Other properties in area have garages*

- 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.

*Proposed garage would not encroach on neighboring dwellings or affect neighbors use of their dwellings*

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

*Several other properties in our area have been granted similar property set back variances*

- 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.

*Currently no garage on property*

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

*Will remain residential*

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

*Proposed building is a standard 2 car garage*

- I hereby certify that I am the owner of the subject property or have been authorized to act on behalf of the owner(s) and that all of the statements and attachments are true and correct to the best of my knowledge and belief.
- I acknowledge that approval of a variance only grants that which was presented to the ZBA.
- I acknowledge that I have reviewed the Hamburg Township Zoning Ordinance, The ZBA Application and the ZBA Checklist and have submitted all of the required information.
- I acknowledge that filing of this application grants access to the Township to conduct onsite investigation of the property in order to review this application.
- I understand that the house or property must be marked with the street address clearly visible from the roadway.
- I understand that there will be a public hearing on this item and that either the property owner or appellants shall be in attendance at that hearing.
- I understand that a Land Use Permit is required prior to construction if a variance is granted.

Owner's Signature

Date

Appellant's Signature

Date

*Paul Hall* 4.12.18  
*Paul Hall* 4.12.18





10405 Merrill Road ♦ P.O. Box 157  
Hamburg, MI 48139  
Phone: 810.231.1000 ♦ Fax: 810.231.4295  
www.hamburg.mi.us

## **DPW/UTILITIES DEPT. REVIEW**

I have reviewed ZBA Case #       ZBA18-005       located at       5150 Redding Drive       and offer the following:

[ ] The parcel is not on sewers.

[X] The parcel is serviced by the Hamburg Township Sanitary Sewer System (HTSSS).

- The property owner is requesting variance to allow for the construction of a 732 sq. ft. attached garage with a 3.9 foot front yard set-back. There is an existing garage on site that must be demolished first in order to construct the newly proposed garage.
- The grinder pump station and sewer service lateral are located on the northeast side of the property. The sewer service lateral was installed to just avoid the existing garage when the sewers were installed around Strawberry Lake in 1995 (see attached sketch).
- Based on the “as-built” drawing for the sewer service lateral location, the requested variance to construct the new garage **will** interfere with the sanitary sewer line location. Be advised, the homeowner will be responsible for all costs associated with relocating the sewer service lateral so that the new garage will not be built over the sewer line. In addition, the property owner shall be responsible for any damages caused to the sanitary sewer service lateral during construction of the property improvements.
- An Agreement Regarding Use of Approved Contractor for Grinder Pump Relocation must be signed by the property owners and a permit pulled by the approved Contractor for the sewer relocation work **must** be completed prior to issuance of the Land Use Permit to construct the new garage if the variance is granted.
- Due to the existing on-site situation regarding the sewer, the DPW/Utilities Department has hereby stated its stipulations and requirements if this variance is granted.
- The property owner or Builder must contact Miss Dig at 1-800-482-7171 at least 3 days prior to any digging or excavation work to confirm the location of the sewer and other utility locations.

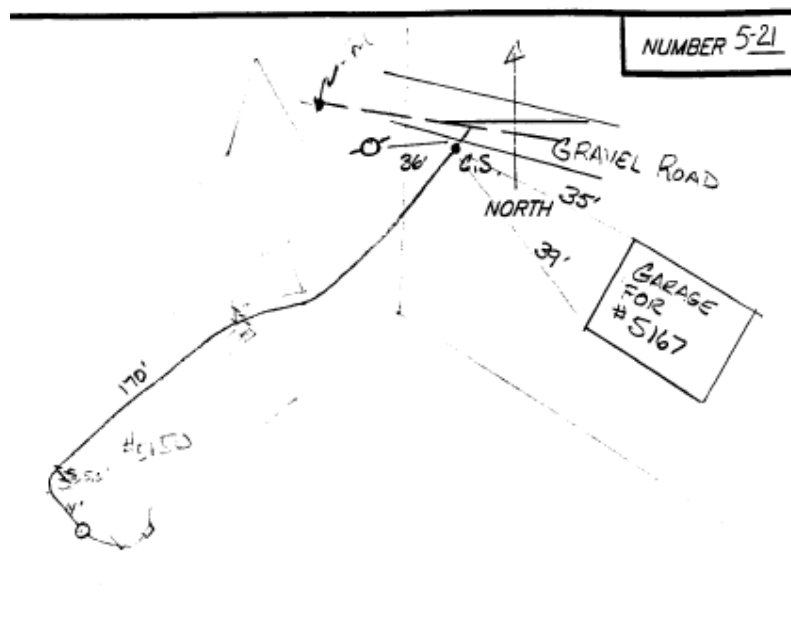
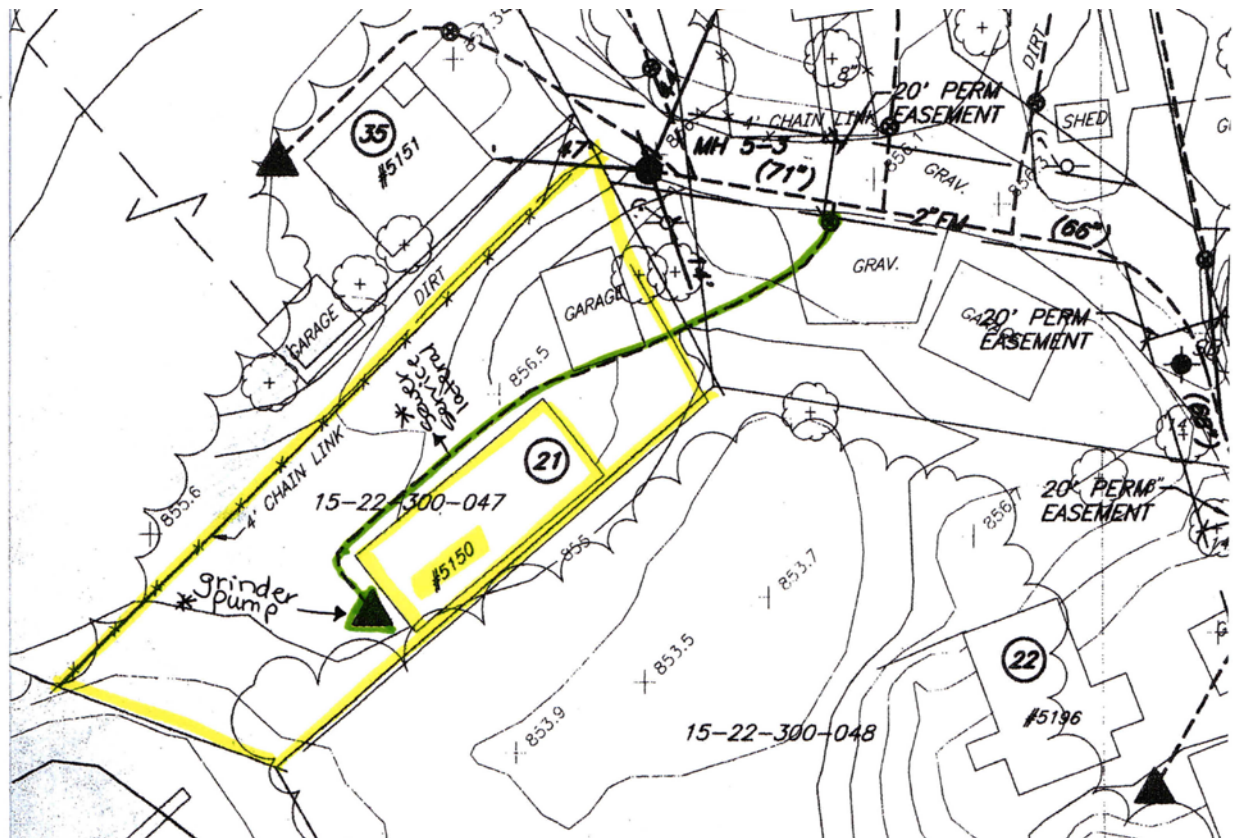
Dated:       April 30<sup>th</sup>, 2018      

Respectfully submitted,



Brittany K. Campbell  
Hamburg Township Utilities Coordinator

The new proposed garage location will create an issue with the existing location of sewer service lateral. The Utilities Department will require that the sewer line be relocated by a Township approved Contractor if the variance is granted.



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

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**Hamburg Township  
Zoning Board of Appeals Minutes  
Hamburg Township Board Room  
Wednesday, April 11, 2018 Minutes  
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: Bohn, Hollenbeck, Neilson, Priebe and Watson

Absent: None

Also Present: Amy Steffens, Planning & Zoning Administrator

**4. Correspondence:** None

**5. Approval of Agenda:**

Motion by Neilson, 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 2018-004**

Agent: Angelini & Associates Architects

Owner: Stephen and Catherine Boston Living Trust

Location: 9658 Zukey Drive Pinckney MI 48169

Parcel ID: 15-22-301-001

Request: Variance application to allow for the partial demolition of an existing dwelling and the reconstruction of a 3,873-square foot dwelling. The proposed dwelling will have a 34.5-foot setback from the ordinary high water of Zukey Lake (50-foot setback from the ordinary high water required, Section 7.6.1.) and an 11-foot north side front yard setback from the platted right-of-way of Petty's Drive (25-foot front yard setback required for corner lot, Section 7.6.1.fn4.).

Variance application to allow for the addition to an existing non-conforming detached garage. The addition will have a 2.7-foot south side yard setback (five-foot side yard setback

required, Sections 8.3.2. and 11.3.2.). A pergola attached to the garage will have a 9.4-foot east front yard setback (25-foot front yard setback required, Section 8.3.2.).

Theresa Angelini of Angelini & Associates Architects clarified the project description and the requested variances. She reviewed the proposed project including a partial demolition of the existing structure and utilizing 100% of the existing foundation, except the porch foundation on the lake side which they believe is not structurally reliable. Most of the walls on the south and east sides will remain. The existing ground floor is 1589 square feet, they will be adding 556 square feet for a total ground floor of 2,145 square feet. They are adding roughly 25% more square footage. The second floor existing is 2,580 square feet and are adding roughly 1,300 square feet. The total square footage will be 3,877. From the ordinary high water mark, the existing dwelling is 29 feet 3 inches and the proposed dwelling would have a 33 foot setback. She stated that none of the dwellings in the area meet the required 50 foot setback. She reviewed the current setbacks in the area and stated that enforcement of that setback would create a hardship that the surrounding property owners do not have. She further discussed the elevation of the house, grade and 100 year floodplain. Mr. Angelini reviewed the design of the house. Ms. Angelini reviewed the site layout including the fact that it is a corner lot with a 25 foot setback on the north side, which they are asking to be reduced to 11 feet. She discussed the garage. She stated that currently the footprint overlaps the property line by .9 feet and they have moved the north end of that east wall back 1 foot so it is back from the property line 2.7 feet. She stated that they are proposing the pergola to soften the connection of the detached garage and the house from the street. It is open on top and is not much more than a garden element. She discussed the standards of review. She stated that this is a corner lot and has additional restrictions that do not apply to other properties. The lot size is 9,627 square feet which is slightly larger than some of the properties in the Petty's subdivision, but it is significantly less than the minimum lot size as stated in the zoning ordinance for Waterfront Residential. The lot width is 74.75 feet or 60% of the required width. The staff report indicates that the dwelling could be demolished and replaced with a conforming structure, however that would result in a subdivision type house. They feel that the scale of that would be wrong for the site. The staff has described the garage addition as minor. However they feel that it makes the space much more functional. She discussed the November 2017 Zoning Text Amendment. She further stated that there is no basement so the additional storage is needed. The proposed remodeling and addition does not block the view from the north or south and they are proposing to move that back an additional 4 feet from the existing house improving the current setback from the ordinary high water mark. Since all of the homes in the area are built within that 50 foot setback, it would be unreasonable to hold this applicant to that standard. She further discussed the need for storage space and adding that to the existing garage rather than an additional accessory structure. They believe that none of the variances requested are detrimental to the public welfare or materially injurious to the properties in the district nor will they adversely affect the purpose or objectives of the master plan. She further discussed the estimated demolition and the desire to use portions of the existing dwelling. She discussed the existing cottages and houses in the area. The practical difficulty here is that the lot is ¼ the size stated in the zoning ordinance, all the homes in the area have setbacks within that 50 foot required setback, and they are re-using the existing structure as much as possible.

Planning & Zoning Administrator Steffens described the subject site, existing conditions and the existing and proposed setbacks. She stated that the ordinance considers a lot to be a corner lot even if the right-of-way that it touches is unimproved. In this case it is platted that way, and in the future it could be improved. Ms. Steffens discussed the ordinary high water mark. She stated that this is separate from the 100-year flood plain. The applicant has supplied a topo survey, but it is not sealed which will be required. It does show that the proposed structure is outside the flood plain. The ordinary high water mark has no relation to the flood plain elevations. They also understand that the ordinary high water mark can change over time. She stated that the Board is bound to find that the application would or would not comply with the seven standards of review. She reviewed the staff's findings. She stated that the lot could accommodate a compliant structure but the chosen design creates a self-imposed practical difficulty. With the demolition of approximately 70 percent of the existing walls, the project could be designed to meet the setback standards. Staff does find that the requested north front yard setback variance is a reasonable deviation from the ordinance based on the unlikelihood that the platted right-of-way would be developed as anything other than unimproved lake access. However, the requested setback from the ordinary high water mark and the setback for the garage are a

concern. The applicant has indicated that because the lot is smaller than the minimum lot size required for the waterfront district, it creates an exceptional or ordinary circumstance. However, the one-acre requirement is applied when creating a lot. The vast majority of our lakefront subdivisions were platted with 50-foot lot widths. This is actually a sizeable lot for lots within the waterfront district. The removal of the majority of the structure does present the opportunity to bring the structure into compliance. Additionally, the garage addition would increase the nonconformity of a structure that basically sits right on the street. Our ordinance is designed to get rid of nonconformities, not make the nonconformity greater. She stated that the pergola is a self-imposed practical difficulty. It is something that is desired and not needed. The site is zoned for single family uses and can be used for such a use. With 70% of the walls being removed, there is no reason to approve further encroachment into the setbacks. Additional living space could be constructed on the other side of the street. The location of the addition is a self-created practical difficulty. Also, as it relates to the additional garage storage, additional storage could be located elsewhere on the site in a conforming location. Furthermore, the proposed pergola's deficient setbacks is due to personal preference. She stated that the setback from the ordinary high water mark is intended to protect an open vista to the water from neighboring properties. Permitting a new structure to impede on the waterfront setback when there are alternative locations is detrimental to the public welfare, particularly those properties that have been built with a compliant setback. She discussed the master plan vision of the area and stated that the proposed request would not adversely affect the purpose or objectives of the Master Plan. She further discussed review standards 5-7 as it relates to the site. The lot could accommodate a compliant structure, but the chosen design creates a self-imposed practical difficulty requiring variance approval. The project could be designed to meet the setback requirements. Ms. Steffens presented a drawing of the lot drawn to scale and included the required setbacks and building envelope and showed how the house could be built in a compliant location. The Board is here to determine if there is something so restrictive with the lot that a compliant structure could not be built. Clearly it can.

Ms. Boston, applicant, stated that what is being missed is that they are trying to preserve what they can of a 100 year old house. They do not want to tear down the house and build a new house. They have spent a lot of money to try to preserve a 100 year old home that they love. After many plans, this is what they have come up with. There is a beautiful aesthetic along that strip and that is what they are trying to preserve.

Member Bohn stated that all of the houses to the south have substantially less than 50 foot setback from the high water mark. Discussion was held on the engineering and the use of the FEMA map to determine the high water mark.

Member Watson stated that he still has a problem with the front yard setback at the unimproved right-of way. The existing setback is 27 feet and proposed is 11 feet. You cannot ignore the setback simply because you want a bigger structure. He agrees that a lot of the structures are non-conforming, but if they chose to re-build, they would also have to meet the setbacks.

Chairperson Priebe opened the public hearing.

Mr. John Lamb of 9700 Zukey Drive stated that he does have some concern particularly with the 11 foot side setback. He stated that he and some of the other residents have been discussing putting gravel down on the access to the lake. The applicants have approached some of the residents because they do not feel that they should be using that access to park their boats and trailers, which they have been doing since the 1950s. His understanding when he bought his property was that was the intent for the residents in the subdivision. They do not want to lose their rights to that property. They are concerned that if the house is that close to the easement, then they will end up putting grass there, etc. He is also concerned about the road during construction. It is a private road maintained by the residents. They would hope that they would maintain the road as they are building or restore the road when they are complete. Finally, this is already a non-conforming property and they are requesting an additional three variances making it even more non-conforming.

Mr. Nick Graham of 9669 Zukey Drive stated that he lives across the road from the Boston's. One of the concerns he has is the site lines. They are requesting to take the home that is already encroaching on the south side and extending it further to the north side. He is losing his site lines. When he purchases a property, he knows the provisions and the setbacks. Prior to purchasing that property, he has a plan. They are already encroaching the setbacks on the lake side, the south side and the east side, and they are now asking to encroach even further on the north side. He is concerned about the site lines and how it affects his property value into the future.

Mr. Paul Stark of 9638 Zukey Drive stated that he lives to the north of the Boston's and has been on the lake since 1968. The Boston's house was his brother's house, and he gave a brief history of the property. Unfortunately, the houses all along that road are non-conforming. To try and correct some of these things is going to be difficult. To tear down the house to make it fit does not make a lot of sense. We want to use what's there and make sense of it. Ever since he has been there, nobody knew what that right-of-way was. People have been able to use it to whatever extent they wanted. There will never be a road there. When his brother owned the home, he made some improvements, but there are still a lot of deficiencies. We can try to use common sense here. If changes can be made, he would hope that they don't have to tear down the entire building. He does not have any opposition to what they are trying to do. He stated that he knows the Bostons, and they are trying to do what is right to meet the requirements but yet not start from scratch. If you move the structure back from the water, then they will lose their view because of existing structures.

Marlo Stevens of 9708 Zukey Drive stated that she is fairly new to the subdivision. She recently added an addition to her house and did not have to ask for any variances. When she moved in, she was told that they did have the access that they could use to park boats and trailers, etc. They do not have a homeowner's association. They all work together. She has had a knock on her door from someone saying they could not park their stuff on the common area. She does not want them to encroach the area that is common to all of them.

Elizabeth Ann Winter of 9715 Zukey Drive stated that area has always been known as common area. It is used and it always looks nice. She agrees that having a defined space is important for those who use it.

Mr. Rick Beaudin of 9676 Zukey Drive stated that the good thing that has come out of this is that the neighbors have gotten together to discuss the access. Now they are finding out that it is a road. They need to have a discussion about what they are going to allow there. He does not have a problem with the variance, but they cannot tell us that they cannot park there.

Mr. Boston, applicant, stated that this is about the variance to the property not so much about the road. He did not strong-arm anyone, but he did talk to people. There is no intent to take down the fence or develop the road. Since it is a drive, they are asking that it be treated as a drive. They have used it for storage and are in agreement to move their equipment somewhere else. They feel that their proposal is consistent with other remodels that have been done in the area. They have been trying to work with the existing footprint as much as possible while trying to expand it to what they want out of a lake house. If they were to meet all of the setbacks, it would look like a neighborhood house out of a typical subdivision, not a lake house they intend it to be. They feel that the variances they are requesting are fair and reasonable to meet the design they are trying to accomplish and still meet the requirements with as few variances as possible. He appreciates everyone's time and comments.

Chairperson Priebe closed the public hearing.

Chairperson Priebe stated that the ZBA deals only with zoning. Issues dealing with the lake access would be a civil matter. We are looking at the variance requests as submitted.

Commissioner Bohn asked how that access is platted. Planning & Zoning Administrator Steffens stated that it is a platted right-of-way dedicated to the use of the owners within the subdivision.

Steffens stated that there has been discussion regarding a fence along the right-of-way. Staff would like to point out that a fence is not allowed within 50 feet of the ordinary high water mark.

Chairperson Priebe stated that her biggest concern is the garage issue.

Member Watson asked if the Board could ask the applicant to re-look at this to possibly reduce the variance request. Steffens stated that the Board could table the issue to the next hearing to allow the petitioner time to re-work their plan.

Chairperson Priebe stated that the Board could approve or deny all or part of the request. If it is denied, the applicant could not make a request for a year unless the plan is substantially different than the original request.

Member Neilson stated that the request is to go from 2500 square feet to over 3800 square feet. Something in between could meet the setbacks. He feels that there are too many things that are self-imposed.

Steffens discussed an alternative design.

Mrs. Boston stated that they would be willing to forgo the pergola and additional space to the garage if it is helpful to reach a conclusion.

Member Bohn stated that he does not feel that we will ever be able to achieve 50- foot setback to the high water mark on this road. And, it is completely for aesthetic purposes, not a safety issue.

Motion by Bohn, supported by Hollenbeck

Motion to approve variance application ZBA 18-004 at 9658 Zukey Drive to allow for the construction of a dwelling with an 11-foot north front yard setback from platted right-of-way (25-foot front yard setback required for a corner lot, Section 7.6.1.fn4.). The variance does meet variance standards one through seven of Section 6.5. of the Township Ordinance and a practical difficulty does exist (predominantly the shape and location and size of the lot and its relationship to an undeveloped, dedicated, and used by the subdivision. right-of-way) on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at tonight's hearing and as presented in the staff report and allow for a 3,877 square foot dwelling with a 34.5 foot setback from the ordinary high water of Zukey Lake (50-foot setback from the ordinary high water mark is required by Section 7.6.1) 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 (predominantly its orientation to the lake and it's lot size relative to other waterfront lot sizes) when the strict compliance with the Zoning Ordinance standards are applied as discussed at tonight's hearing and as presented in the staff report. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

Steffens asked if the intent of the motion is that any of the existing structure could remain. Staff has indicated that the entire structure could be removed. Member Bohn stated that the intent is to approve the variance request as submitted with no more than 70 percent of the existing structure being removed. This is an improvement to an existing structure with those features to be preserved. If those walls were to be removed, it would not comply with the approval.

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

Member Watson again discussed the applicant going back to re-design the request.

Motion by Watson, supported by Neilson

To deny a variance application to allow for the addition to an existing non-conforming detached garage. The addition would have a 2.7-foot south side yard setback (five-foot side yard setback required, Sections 8.3.2. and 11.3.2.). A pergola attached to the garage would have a 9.4-foot east front yard setback (25-foot front yard setback required, Section 8.3.2.). The variance does not meet variance standards one, two, three, five, or seven of Section 6.5 of the Township Ordinance and a practical difficulty does not exist on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at tonight's hearing and as presented in the staff report. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

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

Chairperson Priebe stated that the applicant has the option of re-designing the garage and making another request at a future date.

It was stated that the existing house is already within the 50-foot setback to the high water mark. Any addition to a non-conforming structure has to comply with the setbacks. You could keep what is there, but anything added would have to be 50 feet back from the high water mark and 25 feet back on the north.

#### **8. New/Old Business:**

- a. Approval of March 14, 2018 meeting minutes and findings of fact for ZBA 18-003

Motion by Neilson, supported by Watson

To approve the March 14, 2018 meeting minutes and findings of fact for ZBA 18-003 as presented

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

Steffens stated that the 2020 Master Plan Update kick-off meeting is tomorrow here at 1:00 p.m. Chairperson Priebe and Member Neilson are on the steering committee. We welcome anyone interested in attending and would love to have additional Board members attend. We will introduce the steering committee, the process, the schedule and set our next meeting date. We will have a mix of daytime and evening meetings.

#### **9. Adjournment:**

Motion by Hollenbeck, supported by Watson

To adjourn the meeting

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

The meeting was adjourned at 8:39 p.m.

Respectfully submitted,

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Julie C. Durkin  
Recording Secretary

The minutes were approved  
As presented/Corrected: \_\_\_\_\_

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Joyce Priebe, Chairperson





FAX 810-231-4295  
PHONE 810-231-1000

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

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## **ZONING BOARD OF APPEALS MEMORIALIZATION OF FINDINGS**

**April 11, 2018**

### **Approval of Variance (18-004)**

**PROJECT SITE:** 9658 Zukey Drive  
TID 15-22-301-001

**APPLICANT:** Angelini & Associates Architects

**OWNER:** Stephen and Catherine Boston

### **PART I – PROJECT DESCRIPTION**

Variance application to allow for the partial demolition of an existing dwelling and the reconstruction of a 3,877-square foot dwelling. The proposed dwelling will have a 34.5-foot setback from the ordinary high water of Zukey Lake (50-foot setback from the ordinary high water required, Section 7.6.1.) and an 11-foot north side front yard setback from the platted right-of-way of Petty's Drive (25-foot front yard setback required for corner lot, Section 7.6.1.fn4.).

Variance application to allow for the addition to an existing non-conforming detached garage. The addition will have a 2.7-foot south side yard setback (five-foot side yard setback required, Sections 8.3.2. and 11.3.2.). A pergola attached to the garage will have a 9.4-foot east front yard setback (25-foot front yard setback required, Section 8.3.2.).

### **PART II– FINDINGS FOR DENIAL**

The Zoning Board of Appeals approves the project described above because the Board finds that the project complies with the applicable standards of the township ordinance including the applicable variance standards as follows:

#### **Variance Standards**

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

The zoning ordinance's setback requirements are intended to provide flexibility and accommodations for waterfront lots and the site, at 9,627 square feet, is a sizeable lot size for the waterfront residential district. A structure conforming to the setback from the ordinary high water mark of Zukey Lake could be constructed on the site. With the removal of a majority of the existing dwelling the opportunity exists to bring this site into compliance with the setback from Zukey Lake that the township strives to protect. Adding a pergola to the garage creates a self-imposed practical difficulty and is not due to an exceptional or extraordinary circumstance applicable to the property.

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

A substantial property right is not preserved based on granting a variance for a particular architectural design. The site is zoned for single-family residential uses, has been developed for such uses, and can continue to be used for such use with a conforming structure. Approximately 70 percent of the exterior walls will be removed to accommodate a new dwelling. With the majority of the dwelling being demolished, staff finds no compelling reason to approve further encroachment into the setback from the ordinary high water mark. Additional living space could be constructed on the street side of the site, well within the setback requirements. The location of the addition is a self-created practical difficulty.

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

The setback from the ordinary high water mark is intended to maintain and protect an open vista to the water from neighboring properties. Permitting a new structure to impede on the waterfront setback when there are alternative locations to construct additional living space is detrimental to the public welfare, particularly those properties that have been built with a complaint setback.

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

The subject site is in the North Chain of Lakes planning area of the Master Plan. This area envisions waterfront and natural river district zoning closely tied to the lakes and Huron River. The proposed request would not adversely affect the purpose or objectives of the Master Plan.

**5. That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature.**

There is no condition or situation of the subject site that is not of so general or recurrent a nature that the proposed dwelling cannot comply with the ordinary high-water mark setback standards. The site is a sizeable waterfront lot and there is adequate room in the east front yard to construct additional living space. Zoning text amendments have been recently enacted to address recurrent conditions of waterfront lots. The subject site can accommodate a compliant structure. Removing a nonconforming structure to construct another nonconforming structure is not consistent with the intent and spirit of the zoning ordinance.

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

The use of the site is single-family residential and the proposed variance would not change the use.

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

The lot could accommodate a compliant structure but the chosen design creates a self-imposed practical difficulty requiring variance approval for both the dwelling variance requests and the garage addition requests. With the demolition of approximately 70 percent of the linear feet of the existing walls, the project could be designed to meet the setback standards.

Denied by the Hamburg Township Zoning Board of Appeal at a regular meeting on April 11, 2018 by the following vote:

AYES:	BOARD MEMBERS:	Bohn, Hollenbeck
NOES:	BOARD MEMBERS:	Priebe, Watson, Neilson
ABSENT:	BOARD MEMBERS	