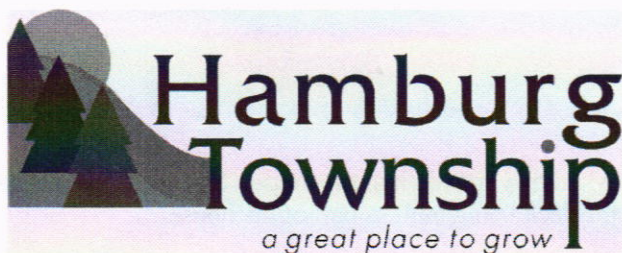


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**Hamburg Township
Zoning Board of Appeals Minutes
Hamburg Township Board Room
Wednesday, September 11, 2019
6:00 P.M.**

1. Call to order:

The meeting was called to order by Acting Chairperson Auxier at 7:00 p.m.

2. Pledge to the Flag:

3. Roll call of the Board:

Present: Auxier, Diepenhorst, Hollenbeck, Neilson, & Watson,

Absent: Priebe

Also Present: Amy Steffens, Planning & Zoning Administrator

4. Correspondence: None

5. Approval of Agenda:

Motion by Hollenbeck, supported by Watson

To approve the agenda as presented

Voice vote: Ayes: 5 Nays: 0 Absent: 1 MOTION CARRIED

6. Call to the public:

Acting Chairperson Auxier 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 19-0015

Owner: Kim and Kevin Muszynski

Location: 3816 Langley, Pinckney MI 48169

Parcel ID: 15-29-202-033

Request: Variance application to allow for the construction of a 5-foot by 12-foot elevated deck with a 5-foot east side yard setback (8-foot side yard setback required for elevated decks, Section 8.18.2.).

Kim & Kevin Muszynski were present. Ms. Muszynski stated that they hired a builder, Mitch Harris, to build their house and deck. They assumed it would be done correctly. Mr. Harris became ill and the construction that was supposed to last 9 months actually lasted 13-14 months. They do not deny that the deck was built incorrectly, but they are at the mercy of the Board.

The question was asked when they moved into the house. Ms. Muszynski stated that they moved in January. Discussion was held on the deck being built as part of the house.

The question was asked if the builder is aware of the problems with the deck and has he agreed to amend the deck to the Township's satisfaction? Ms. Muszynski stated that the builder's solution is to cut the corner of the deck on a diagonal. They do not want a diagonal shaped deck or a deck that would cut off in the middle of the door wall.

Discussion was held on the fact that the deck was not added until May of 2019. It was stated that it was not in the original plans. Mr. Muszynski stated that it was part of the agreement with the builder.

Amy Steffens, Planning & Zoning Administrator stated that the subject site is a 6,621-square foot parcel that fronts onto Langley Drive to the north; Cordley Lake is to the south; single-family dwellings are to the north, east, and west. The site is improved with a recently constructed 1,156-square foot single-family dwelling, with a 976-square foot walk-out basement and a 776-square foot attached garage. If approved, the variance request would allow for the construction of a 5-foot by 12-foot elevated deck with a 5-foot east side yard setback. Our ordinance was amended within the last four months to allow additional encroachment by things like an elevated deck. The new ordinance specifies that an elevated deck may project into a required yard not to exceed six feet provided that the structure is no closer than eight feet to the property line. They are proposing a 5 foot setback. She stated that we do have a history with this elevated deck. On or about April 11, 2018, Hamburg Township received a land use permit application for the construction of a new single-family dwelling on a vacant parcel. Because additional information was needed, including lot coverage calculations and a hold harmless agreement for the location of the grinder pump, the permit application was put on hold. The first week of May, the zoning administrator emailed the contractor to inquire about an elevated deck that was shown on the proposed floorplans but not on the site plan. At that time, the zoning administrator indicated that based on the site plan submitted with the permit application, the proposed elevated deck might not comply with the zoning ordinance setback requirements because no setback was provided on the plan. In follow up telephone conversations between the zoning administrator and the contractor, it was suggested that the size of the deck could be reduced to no more than five feet in any horizontal direction so that it could be permitted as a stoop. A stoop can be that size. That would be allowed because we recognize that people need to get out of the home. It was also suggested that the size of the door opening could be changed or the deck itself could be reduced to meet the setback. The decision was made to remove the deck from the floorplans and the site plan. On May 7, 2018, land use permit 18-011 was issued for the construction of the dwelling without the elevated deck. On June 4, 2018, the contractor emailed staff to inquire again about the elevated deck requirements. On January 4, 2019, zoning staff conducted a final inspection of the construction of the dwelling and noted that no elevated deck had been installed. After a performance bond was placed for the street trees, staff released the final zoning compliance to allow the Livingston County Building Department to issue a certificate of occupancy (CO); the CO clearly indicates that no deck was permitted or constructed. As far as the Township is concerned, it is still a temporary CO because the street trees have yet to be planted. We do have a bond, and they are over their timeline to get the trees planted. On May 1, 2019, zoning staff was made aware that the elevated deck was installed without either a land use permit or a building permit. The Zoning Board of Appeals is bound by 7 findings of fact and must find that a project meets all 7 findings in order to recommend approval.

Steffens reviewed the findings. She stated that there is no exceptional or extraordinary circumstance or condition applicable to this property that do not apply or that would not apply to any other property in the same district or zone. The applicant suggests that the elevated deck was built in this location to minimize grading issues. However, as shown in staff photographs, there is no grade change that could not accommodate a compliant structure. The elevated deck could be reduced in size to comply with the zoning ordinance for a stoop. The dwelling was built to accommodate the grade change from the lake side to the street side, and the site work done in the location of the elevated deck is adequate for a reduced size structure. Furthermore, recent zoning text amendments to Section 11.3. support the community's desire to phase out non-conforming structures, not expand or create them. 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