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**Hamburg Township
Zoning Board of Appeals Minutes
Hamburg Township Board Room
Wednesday, October 9, 2019
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, Hollenbeck, Neilson, Priebe & Watson,

Absent: Rill

Also Present: Amy Steffens, Planning & Zoning Administrator

4. Correspondence: None

5. Approval of Agenda:

Chairperson Priebe stated that we have a request to add a memorandum from Brittany Stein under Old Business regarding a case that was heard at the last meeting.

Motion by Watson, supported by Auxier

To approve the agenda as amended adding a memorandum under Old Business

Voice vote: Ayes: 5 Nays: 0 Absent: 1 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 19-0017

Owner: Jeffrey Weiss

Location: 0 Baudine Rd. Pinckney MI 48169

Parcel ID: 15-17-301-086

Request: Variance application to allow for the construction of a new two-story 1,660 square foot single family dwelling with an attached 1,165 square foot garage. The dwelling will have a 22-foot west front yard setback (25-foot front yard setback required, Section 7.6.1.), and a 35-foot east rear yard setback from the ordinary high water mark of Rush Lake (50-foot setback from the OHM required, Section 7.6.1.fn3), and a 68 square foot elevated balcony with a 29-foot east setback from the ordinary high water mark of Rush Lake (44-foot setback from the OHM required for elevated decks, Section 8.18.2.).

Mr. Jeffrey Weiss, applicant stated that he was before the Board approximately two years ago for a different variance on a ranch style house with an attached three-car garage. At a later date and prior to construction, he reconsidered a two-story home to give him a smaller footprint leaving more land. When he made inquiries to the Zoning Department, he found out that the variance had expired. He presented a new plan and stated that he feels that this will work out better on his lot. It is in line and consistent with the architecture of the neighborhood.

Amy Steffens, Planning & Zoning Administrator stated that the subject site is a vacant lot almost to the end of Baudine. It is a fairly good sized lakefront lot, 14,402-square feet in size. If approved, the variance request would allow for the construction of a new two-story 1,660 square foot single family dwelling with an attached 1,200 square foot garage, an 88-square foot covered front porch, and a 68-square foot elevated deck on the rear of the dwelling on the canal side. The dwelling will have a 22-foot west front yard setback where a 25-foot front yard setback is required, and a 35-foot east rear yard setback from the ordinary high water mark (OHM) of Rush Lake where a 50-foot setback is required. The elevated balcony will have a 29-foot east setback from the OHM of Rush Lake. Elevated decks can encroach up to six feet into the required yard, therefore it is required to have a 44 foot setback from the OHM. The garage does not need any variances. It does meet the 15 foot setback from the road. She stated that based on FEMA's Flood Insurance Rate Map (FIRM), as well as information provided by the applicant, a portion of the site lies within the 100-year floodplain. If you look at the elevations, you can see that the existing grades of the building envelope are up to a foot below the base flood elevation. Because we participate in the National Flood Insurance Program (NFIP), we must assure that building code standards are complied with and we meet our own floodplain development ordinance. An elevation certificate must be submitted prior to the issuance of a land use permit, when the foundation is completed and before vertical construction, and when the project is complete. She has inquired if EGLE has authority over this floodplain, but she has not heard back yet. If it is, the applicant may be required to obtain a permit from them first. Should the applicant propose to fill the building envelope to elevate the dwelling in order to obtain a LOMR-F, the township will require the applicant to deposit a review escrow for the township engineer to review the plans. These items have nothing to do with the variance, but they are our permitting standards. She gave a history of the site. On August 9, 2017, the Zoning Board of Appeals approved a variance application on this site to allow for the construction of a new 1,699-square foot single-story dwelling with an attached 660-square foot garage. The dwelling would have had a 23.9-foot setback from the OHM where a 50-foot setback is required and a 23.9-foot rear yard setback where a 30-foot rear yard setback is required. The variance lapsed. The property owner neither obtained permits nor began construction on the approved dwelling and the variance approval expired on February 9, 2018. At that time, variances expired after six months. We just approved an amendment to change the ordinance so people will have a full 12 months. Since that time, the property owner has changed the architectural plans for the home as he has presented. Steffens stated that this site is an example of one that deserves some type of variance relief. Even though it is a far larger site than most of our waterfront lots, it is oddly shaped. The most important question for the ZBA is how much of a variance is reasonable. How much are we willing to deviate from the setback standards.

Steffens reviewed the finding of fact. She stated that the site, while a considerable one-third acre, is constrained by two factors: the canal to the east and the shallow lot depth. At its deepest, the lot is 111 feet from the front property boundary to the canal and at its shallowest is 88 feet from the front property boundary to the canal. The required 50-foot setback from the OHM and the 25-foot front yard setback leaves a narrow, long building envelope. Given the configuration of the lot and the setback from the OHM, there does appear to be an exceptional circumstance on this lot that is not applicable to other properties in the same district or zone. Therefore, it could be reasonable to consider that the property deserves some relief from the terms of the zoning ordinance. However, the chosen design of the proposed structure, with the covered front porch and the elevated deck, are not necessarily reasonable deviations from the zoning ordinance. The design of the dwelling drives the need for the front yard setback for the covered porch to have a 22-foot setback and an elevated deck with a 29 foot setback. The porch could be uncovered, thus meeting the definition of a patio, and the home moved forward by five feet, thereby negating the need for the front yard setback and increasing the dwelling's OHM setback to 40 feet rather than the proposed 35 feet. Additionally, the elevated deck on the rear of the dwelling is entirely a personal preference. An elevated deck has a visual, aesthetic, and privacy impact such that the township adopted a zoning text amendment in 2016 to address these concerns and allow an elevated deck to encroach up to 6 feet

into a required yard as long as you are 8 feet away from the property boundary. We capped it because we also recognize that there is additional impact on neighboring properties. A substantial property right is not preserved based on granting a variance for a particular architectural design. The covered porch, 30-foot front yard setback rather than the 25-foot setback required, and the elevated deck on the rear of the dwelling are personal preferences of the applicant. These could be removed thereby mitigating the impact of the variance request. The elevated deck on the rear of the dwelling could potentially be materially detrimental to the property or improvements in the zone in which the property is located because of the aesthetic impact as well as the privacy concerns. The setback from the OHM is intended to provide an open vista along waterfront properties and protect off-site views of the water. The reduced OHM setback and the elevated deck, taken together, could negatively impact adjacent properties. The house is also encroaching the OHM. There is not much to protect the water views except that 50 foot setback from the OHM. Moving the house forward and eliminating the elevated deck goes a little farther in protecting the intent of the setback from the water. The subject site is zoned for single family, it is going to be used for single family and the Master plan envisions that this area will continue to be used for waterfront residential. Again, the Township already adopted a zoning text amendment that relaxed the standards for an elevated deck, and staff finds that there is no condition or situation specific to the property that does not apply to other properties in this vicinity. 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. Again, the property is constrained by size and OHM setbacks and it could be reasonable to grant a deviation from the zoning ordinance. However, the covered porch and the elevated deck are not the minimum necessary to permit reasonable use of the land. They could be removed and still use the lot for single family residential but mitigating the impact of the variance request.

Member Auxier discussed the variance request of 2017. He stated that at that time there were concerns from neighbors regarding the line of site. There was an understanding that the applicant would not encroach toward the canal any further than where the house was set. In this plan, they have moved that out with a raised deck. Mr. Weiss stated that at that time, the whole house was 23.9 feet from the OHM and yes now he is proposing a balcony. He further stated that the house now proposed is closer to the road than the original proposal and it was closer to the canal. It was stated that the deck is now 29 feet back and the house is 35 feet back.

Discussion was held on the front porch. Member Auxier stated that it is reasonable to have a covered entry way into your home.

Discussion was held on the elevated deck. Discussion was held on relocating it to the side. Mr. Weiss stated that he did look at that but with the roof trusses, etc., it is more efficient to go in the direction of the trusses and support beams. He also discussed privacy issues. He would be open to reducing the deck to five feet. Auxier stated that if we are trying to bring things more into conformance, and he feels it should be eliminated. However, it is a lot better than when it was originally approved. Mr. Weiss stated that it is in line with the neighbors even with the balcony. He does plan on putting up glass railing or similar to not block people's views.

Discussion was held on the configuration of the lots.

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

Motion by Auxier, supported by Watson

Motion to approve variance application ZBA 19-0017 at parcel 15-17-301-086 to allow for the construction of a new two-story 1,660 square foot single family dwelling with an attached 1,165 square foot garage. The dwelling will have a 22-foot west front yard setback (25-foot front yard setback required, Section 7.6.1.), and a 35-foot east rear yard setback from the ordinary high water mark of Rush Lake (50-foot setback from the OHM required, Section 7.6.1.fn3), and a 68 square foot elevated balcony with a 29-foot east setback from the ordinary high water mark of Rush Lake (44-foot setback from the OHM required for elevated decks, Section 8.18.2.). 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. There is

an exceptional circumstance that exists that is not applicable to other properties within the district primarily due to position of the road and canal and the narrow building envelope 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: 1 MOTION CARRIED

8. New/Old business

a) Approval of September 11, 2019 ZBA Minutes

Motion by Hollenbeck, supported by Watson

To approve the minutes of the September 11, 2019 Minutes as written including the Special Training

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

b) Memorandum from Brittany Stein – Update on Tabled Variance Request

Amy Steffens, Planning & Zoning Administrator stated that we saw Mr. Richard Olson of 8772 Rushside Drive a couple of times this year. He received a variance to add a second story and then through construction, the whole house was removed. He came back at the last meeting and the request was tabled at that time in order to give him more time to figure out how he was going to proceed. He talked about boundary adjustment, moving forward with a variance request or re-designing. He decided to re-design the entire structure, and he now complies with all of the zoning ordinances. We have issued the land use permit for a compliant house.

Steffens stated that she does not know if we will have a meeting next month. We have not spoken to anyone who might be coming forward in November.

9. Adjournment:

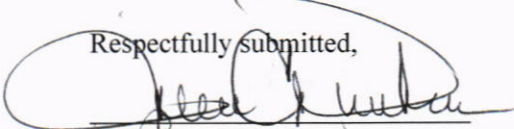
Motion by Watson, supported by Neilson

To adjourn the meeting

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

The meeting was adjourned at 7:34 p.m.

Respectfully submitted,


Julie C. Durkin
Recording Secretary

The minutes were approved as presented/Corrected: 12-11-19


Chairperson Priebe