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**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 complaint 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).