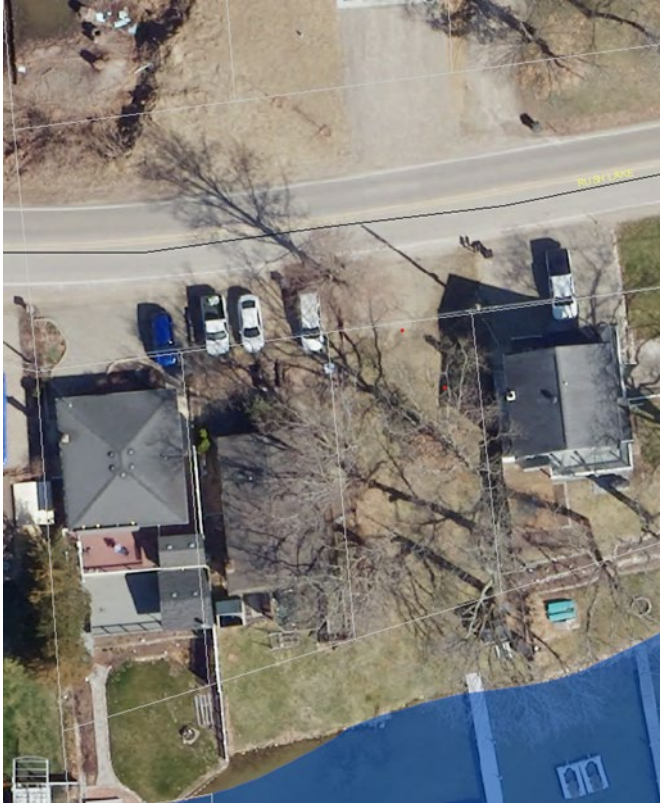




# Zoning Board of Appeals Staff Report



**AGENDA ITEM: A**

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

**FROM:** Scott Pacheco, AICP

**HEARING DATE:** January 11, 2023

**SUBJECT:** ZBA 22-0013

**PROJECT**

**SITE:** 3264 Rush Lake Road

**APPLICANT/**

**OWNER:** Eugene Bough

**PROJECT:** Variance application to allow the construction of a 62" tall retaining wall 35 feet for the ordinary high-water mark (OHM) of Rush Lake where 50 feet is required by the code (Section 36-293 (c)). Also, section 36-227 (b) of the Zoning Ordinance only allows a 48-inch tall wall between the primary structure and the 50-foot waterbody setback and the proposed wall is 62-inches tall.

**ZONING:** Water Front Residential (WFR)

## **Project Description**

In October of 2021 the Zoning Board of Appeals approved a variance application to permit the construction of a 1,994-square foot single-family home with a 440 square foot attached garage and 168 square foot attached porch on the property at **3264** Rush Lake Road. The single-family home was approved with a 3-foot front yard setback (25-foot front yard setback required, Section 7.6.1), 7-foot west side yard setback (10-foot side yard setback required, Section 7.6.1) and an elevated deck 42-foot setback from the ordinary high-water mark (OHM) of Zukey Lake (50-foot OHM setback required, Section 7.6.1. fn. 4).

In April of 2022 the Land Use Permit was issued for the New Single-Family Home. In December of 2022 the property owners were working on getting final zoning sign off of the construction prior to the C-of-O approvals being granted from the Building Department. During this review the retaining wall was discovered (this wall and grading were not shown on any previous project plans). Once this wall and grading was discovered to be in violation of the zoning regulations the property owners submitted for the variance for its approval.

The proposed retaining wall and flat graded area will be 35 feet from the OHM where the prior elevated deck encroachment was only 43 feet from the OHM of Zukey Lake.

### **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. Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.**

It appears the retaining wall was constructed in the proposed location and height to create a larger flat lawn or patio area off the back of the structure. This area is accessed off of the walk out basement and extend approximately 7 feet closer to the lake than the proposed elevated deck which was initially granted a variance to be 42 feet from the OHM of Rush Lake where a 50-foot setback is required.

One way to limit the height of the retaining wall is to tear the flat area proposed. This flat area could also be reduced in size and the retaining wall could be built closer to the home which would reduce the height of the retaining wall and reduce the encroachment into the setback from the water.

- 2. The variance will do substantial justice to the applicant, as well as other property owners**

The proposed variance request to allow the retaining wall to be greater than 4 feet and closer than 50 feet to the water will have minor impacts of the adjacent properties to the north and south as the grading is at ground level and does not appear to obstruct views from these to properties of the lake. The construction would have impacts on the views as taken from Rush Lake. If this type of variance was granted to all property owners with lake front property the appearance of the properties from the lake would be significantly altered and the structures on these properties would be more prominent as viewed from the water.

- 3. A lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.**

It appears that allowing a retaining wall that does not encroach any further into the setback than the approved elevated deck, which a variance was granted for in 2021, and require the height of the retaining wall not exceed 48" would move the proposed improvements on the property further from the edge of the water and reduce the size of the retaining wall making the wall less prominent when viewed from the Rush Lake and adjacent properties.

**4. The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district**

The site does slope down steeply between the home and the OHM of Rush Lake; however the retaining wall is used to create a flat lawn or patio area at the rear of the home and is not necessary for the use of the property.

**5. The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessors.**

The site and surrounding properties are sloped towards Rush Lake from the street. However, the retaining wall is being installed to create a flat area at the rear of the newly built home on the subject site.

**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 approve or deny the variance 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.

**Example Denial Motion:**

The Zoning Board of Appeals denies variance request ZBA 22-0013 at 3264 Rush Lake Road to allow the construction of a 62" tall retaining wall 35 feet for the ordinary high-water mark of Rush Lake where 50 feet is required by the code (Section 36-293 (c)). Also, section 36-227 (b) of the Zoning Ordinance only allows a 48-inch tall wall between the primary structure and the 50-foot waterbody setback and the proposed wall is 62-inches tall. The variance requested is denied because the proposed project does not meet variance standards (1 through 5) of Section 6.5 of the Hamburg Township Zoning Ordinance, and a practical difficulty does not exist on the subject site when strict compliance with the Zoning Ordinance standards is applied, as discussed at tonight meeting and as presented in the staff report. The Board directs Staff to prepare a memorialization of the ZBA's findings for the request.

**Example Approval Motion:**

The Zoning Board of Appeals approves variance request ZBA 22-0013 at 3264 Rush Lake Road to allow the construction of a 62" tall retaining wall 35 feet for the ordinary high-water mark of Rush Lake where 50 feet is required by the code (Section 36-293 (c)). Also, section 36-227 (b) of the Zoning Ordinance only allows a 48-inch tall wall between the primary structure and the 50-foot waterbody setback and the proposed wall is 62-inches tall. The variance as requested is approved because the project meet variance standards one (1) through five (5) 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 tonight meeting. The Board directs Staff to prepare a memorialization of the ZBA's findings for the request.

**Exhibits**

Exhibit A: Application materials and plans