Zoning Board of Appeals Staff Report

TO: Zoning Board of Appeals (ZBA)

FROM: David Rohr

HEARING DATE: August 9, 2023

SUBJECT: ZBA 23-0013

PROJECT SITE: SFH
11765 Pleasant View Dr.
15-31-402-049

OWNER: Charles & Deborah Cleavinger

APPLICANT: Charles Cleavinger

PROJECT: Variance application to permit the construction of a 10x20 foot sunroom on the rear of the house. The proposed sunroom will replace an existing deck of the same footprint. Applicant requests a 20-foot variance from the required Rear yard 30-foot setback requirement, per Section 36-186(F).

ZONING: WFR, Waterfront Residential

Project Description

The subject site is a 0.34-acre parcel with an existing 2,194 single family home. The parcel has access from the west by Pleasant View Dr. Single-family dwellings are located to the north, east, and south.

If approved, the variance would permit the construction of a new 200 square foot sunroom. The applicant is a legally blind disabled veteran and would use the sunroom as a quiet place that would help with light sensitivity issues.

Standards of Review

In accordance with Section 36-137 of the Hamburg Township Zoning Ordinance, the ZBA's decision on this matter is to be based on findings of fact to support the standards provided below. The applicable discretionary standards are listed below in **bold typeface**, followed by Staff's analysis of the request as it relates to these standards. A variance may be granted only if the ZBA finds that all of the following standards 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.**

   The proposed sunroom would be built on the footprint of the existing deck and would not encroach any further than the current deck. Access to the proposed sunroom through the existing door is important for the applicant due to his disabilities. Staff thinks the proposed structure is a reasonable size and will allow the applicant barrier free access to an enclosed and protected space.

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.**

   Granting this variance request is necessary for the preservation and enjoyment of a substantial property right, as the applicant's disabilities and light/noise sensitivities require an enclosed protected space.

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.**

   A reduced rear yard setback is not likely to be materially detrimental to the public welfare or materially injurious to the property or improvements in the district. The proposed structure maintains the current footprint of the deck.

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

   One of the goals of the 2020 master plan is to "Protect, preserve, and enhance whenever possible the unique and desirable natural amenities of Hamburg Township" The granting of this rear yard setback variance would not adversely affect the purpose of 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.**

   The condition or situation of the specific piece of property is of a general and recurrent nature. The proposed sunroom would not encroach any further than the existing deck.

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 site is zoned for single-family dwellings and related appurtenances. Approval of the variance request would not permit the establishment of a use not permitted by right within the district.

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

   Staff finds that the proposed structure size of 200 square feet located in the rear yard will have minimal impact on the surrounding properties. Staff supports the proposed structure as it will not encroach any further into the rear setback than the existing deck.

"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.

Approval Motion

Motion to approve variance application ZBA 23-0013 at 11765 Pleasant View Dr. (TID 15-31-402-049) 20-foot variance request from the required 30-foot rear yard setback, per Section 36-186(F).

The variance meets variance standards one (1) through seven (7) of Section 36-137 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 the meeting this evening and as presented in the staff report.

Denial Motion

Motion to deny variance application ZBA 23-013 11765 Pleasant View Dr. (TID 15-31-402-049)20-foot variance request from the required 30-foot rear yard setback, per Section 36-186(F).

The variance does not meet variance standards one (1), two (2), or seven (7) of Section 36-137 of the Hamburg Township Zoning Ordinance, and no practical difficulty exists on the subject site when strict compliance with the Zoning Ordinance standards is applied, as discussed at the meeting this evening and as presented in this staff report.

Attachments:

Application
Project plans

ZBA Case Number 23-0013

$500.00

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: 7-7-2023
2. Tax ID #: 47-15-31 - 402 - 049 Subdivision: Glenwood on The Lakes Lot No.: 5 70, 71, 72
3. Address of Subject Property: 11765 Pleasant View Drive
4. Property Owner: Charles + Deborah Cleavinger Phone: (H) 734-878-9928
   Email Address: crcleavinger@gmail.com (W) C-810-599-6995
   Street: 11765 Pleasant View Drive City Pinckney State Mi
5. Appellant (If different than owner): _____ Phone: (H) _____
   E-mail Address: _____ (W) _____
   Street: _____ City _____ State ____
6. Year Property was Acquired: 1987 Zoning District: _____ Flood Plain _____
7. Size of Lot: Front 100' Rear 100' Side 1 150' Side 2 150' Sq. Ft. 15,000'
11. Dimensions of Existing Structure (s) 1st Floor 10'x20' 2nd Floor _____ Garage _____
12. Dimensions of Proposed Structure (s) 1st Floor 10x20' 2nd Floor _____ Garage _____
13. Present Use of Property: decks
14. Percentage of Existing Structure (s) to be demolished, if any 100 %
15. Has there been any past variances on this property? Yes _____ No X
16. If so, state case # and resolution of variance application _____
17. Please indicate the type of variance or zoning ordinance interpretation requested:

20x10 Sunroom

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Planning and Zoning Department

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

• I understand that any order of the ZBA permitting the erection alteration of a building will be void after one (1) year (12 months), unless a valid building permit is obtained and the project is started and proceeds to completion (See Sec. 6.8 of the Township Zoning Ordinance).

Owner's Signature Charles R Clearwinger

Appellant's Signature Date

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Hamburg Township
Planning and Zoning Department

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.

Structure will replace existing deck will not change the foot print.

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.

changing for therapeutic/PTSD room.

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.

This will not be detrimental to area residence.

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

No will not adversely affect the purpose of townships plan. Property will remain residential.

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.

The condition is not recurring in nature.

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

Granting does not create a new use.

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

Yes minimum use of land.

- 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.

Tim Lee Construction
734-299-0735

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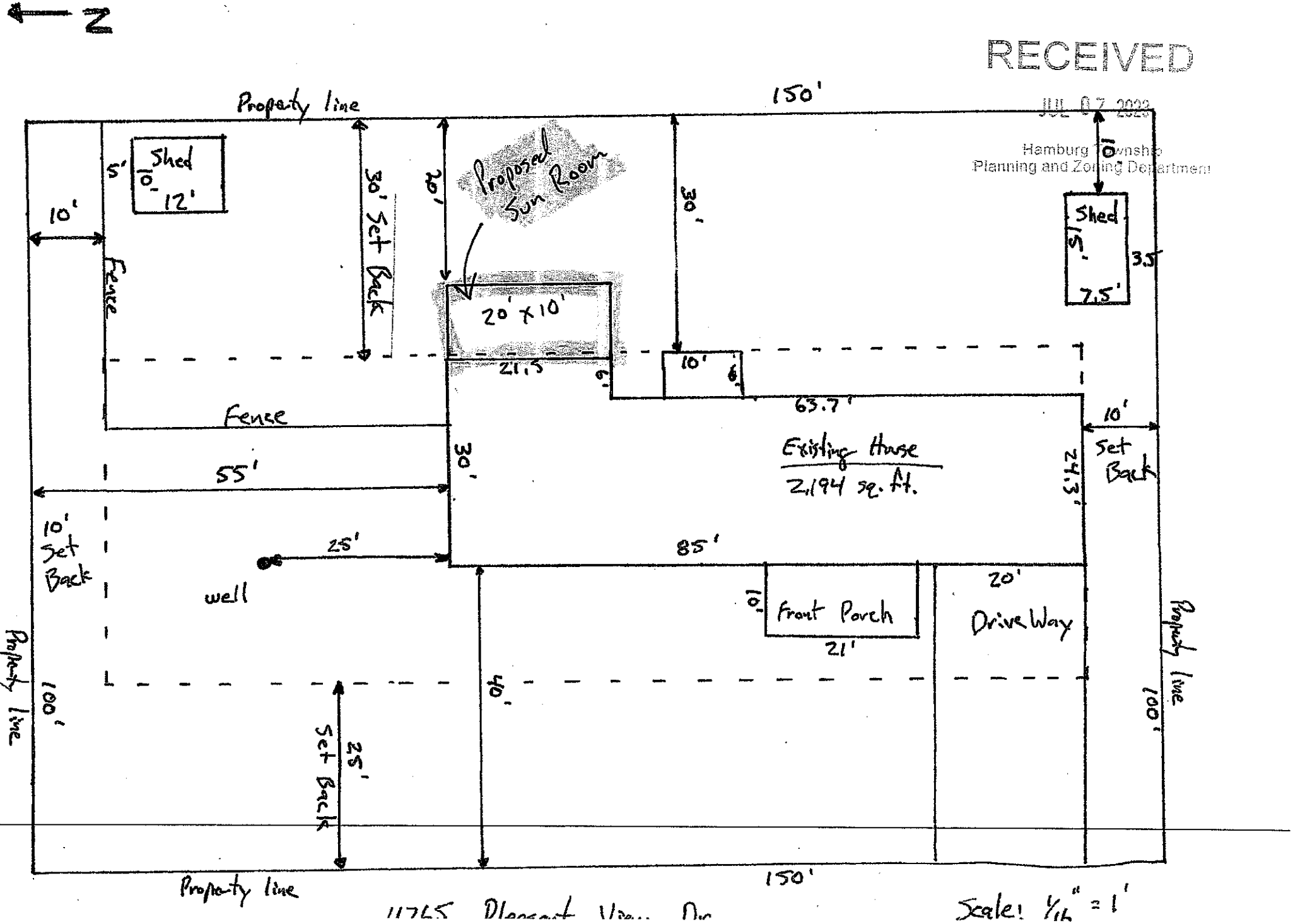
Planning and Zoning Department



11765 Pleasant View Dr.

Scale: 1/16" = 1'

Foundation Plan

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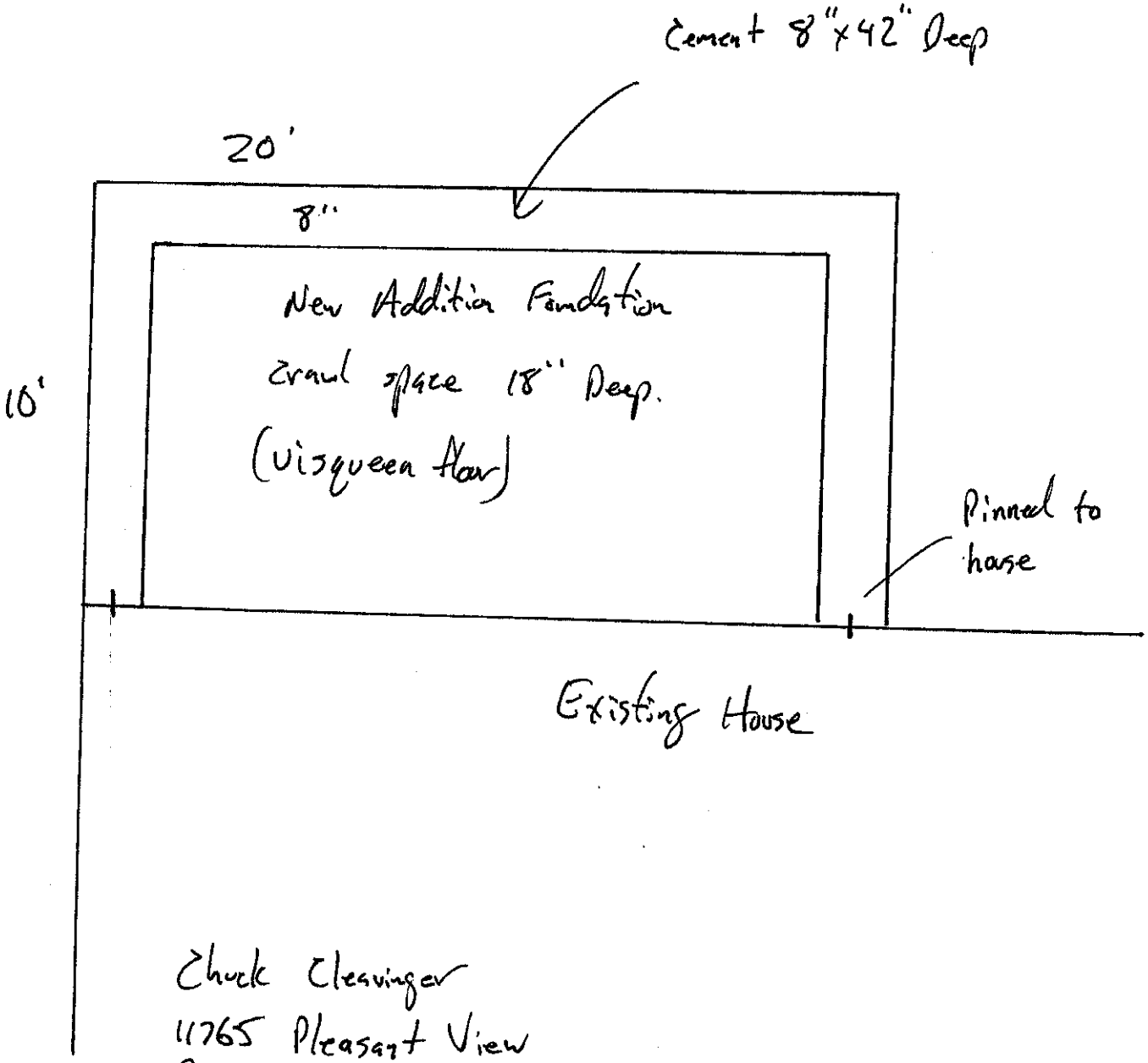

Chuck Cleavinger
11765 Pleasant View
Pinckney, MI. 48169

Section View

11765 Pleasant View Dr.

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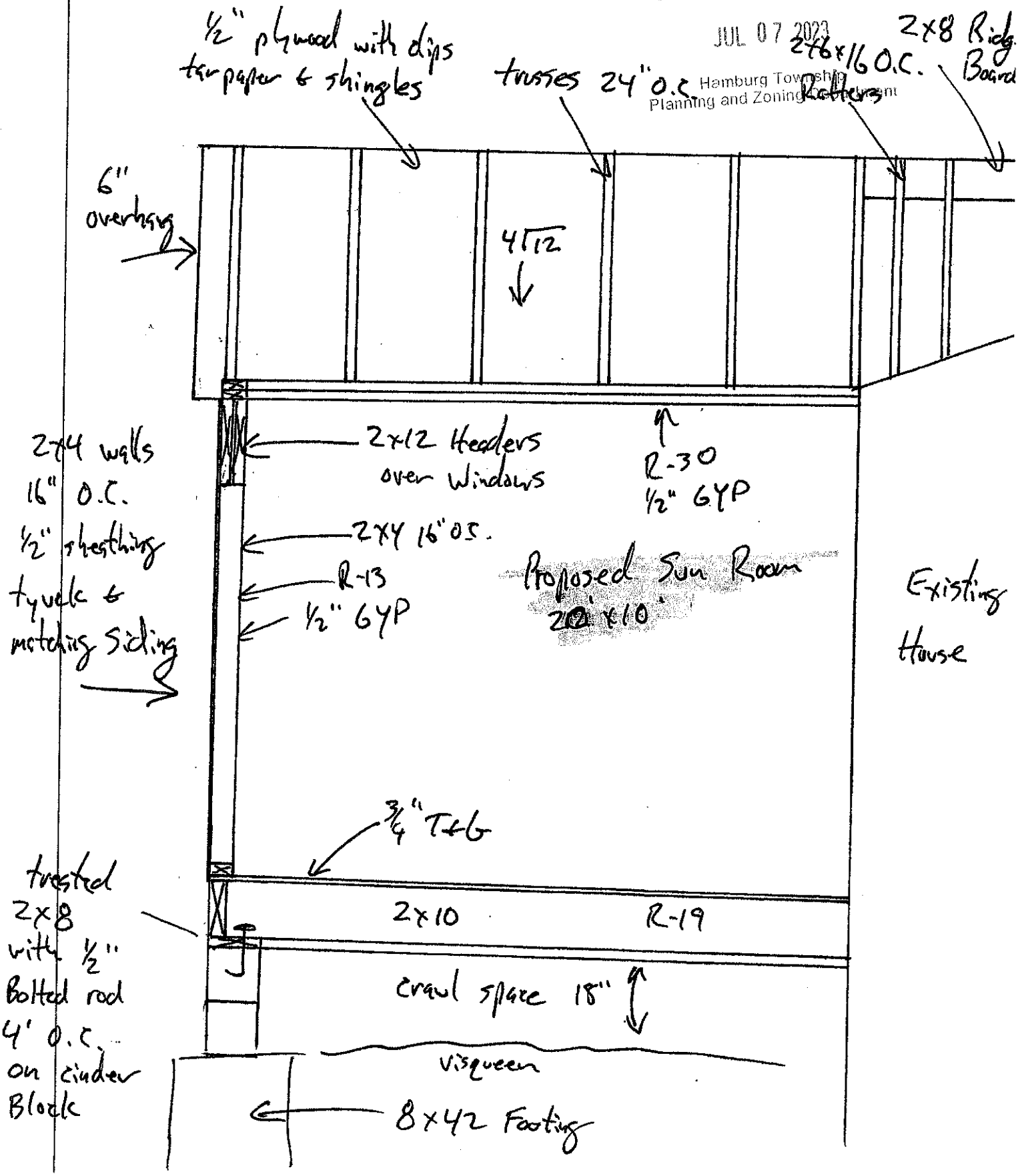

Front House

11765 Pleasant View Dr.
Pinckney

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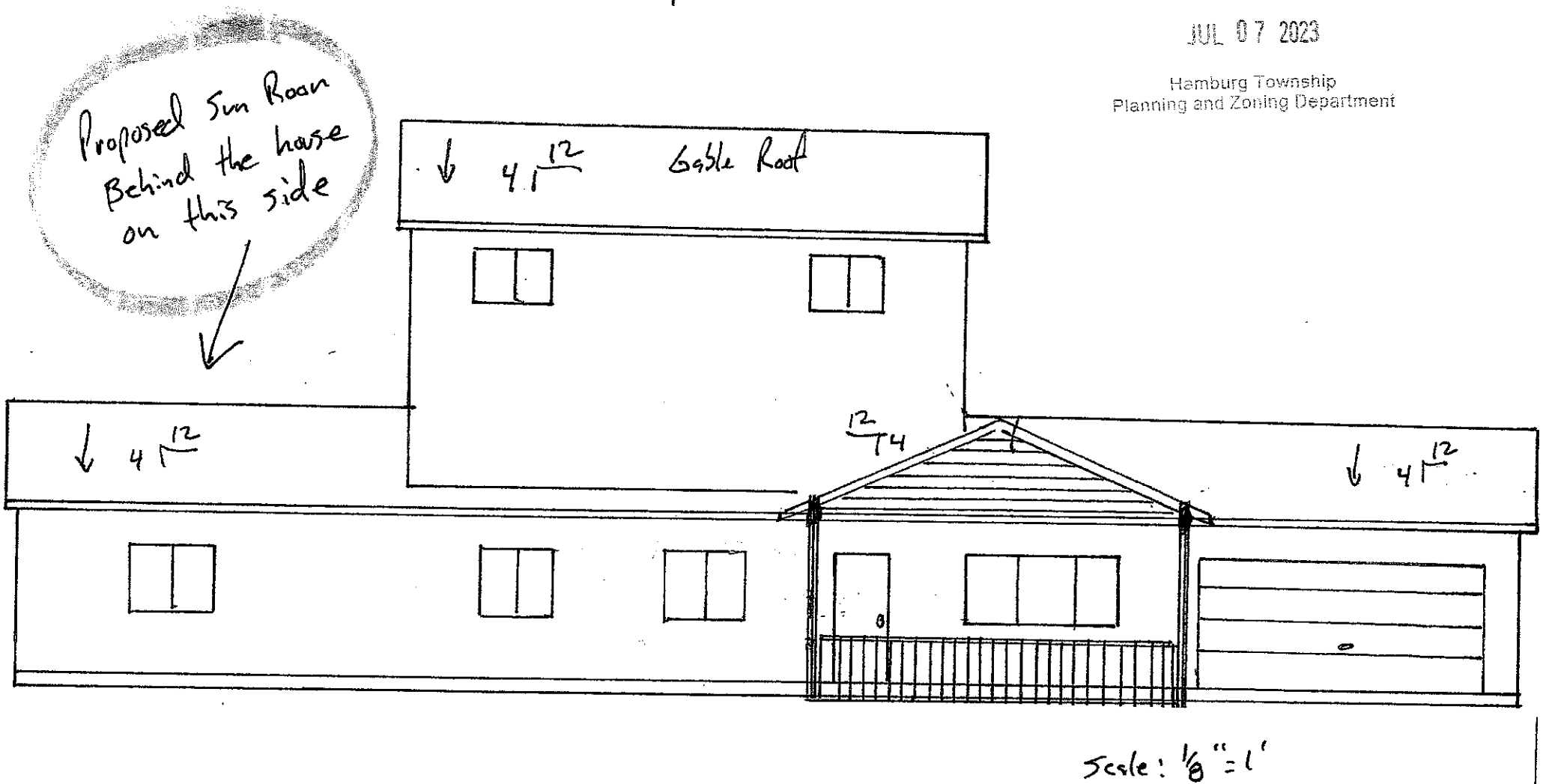

Scale: 1/8" = 1'

Side View

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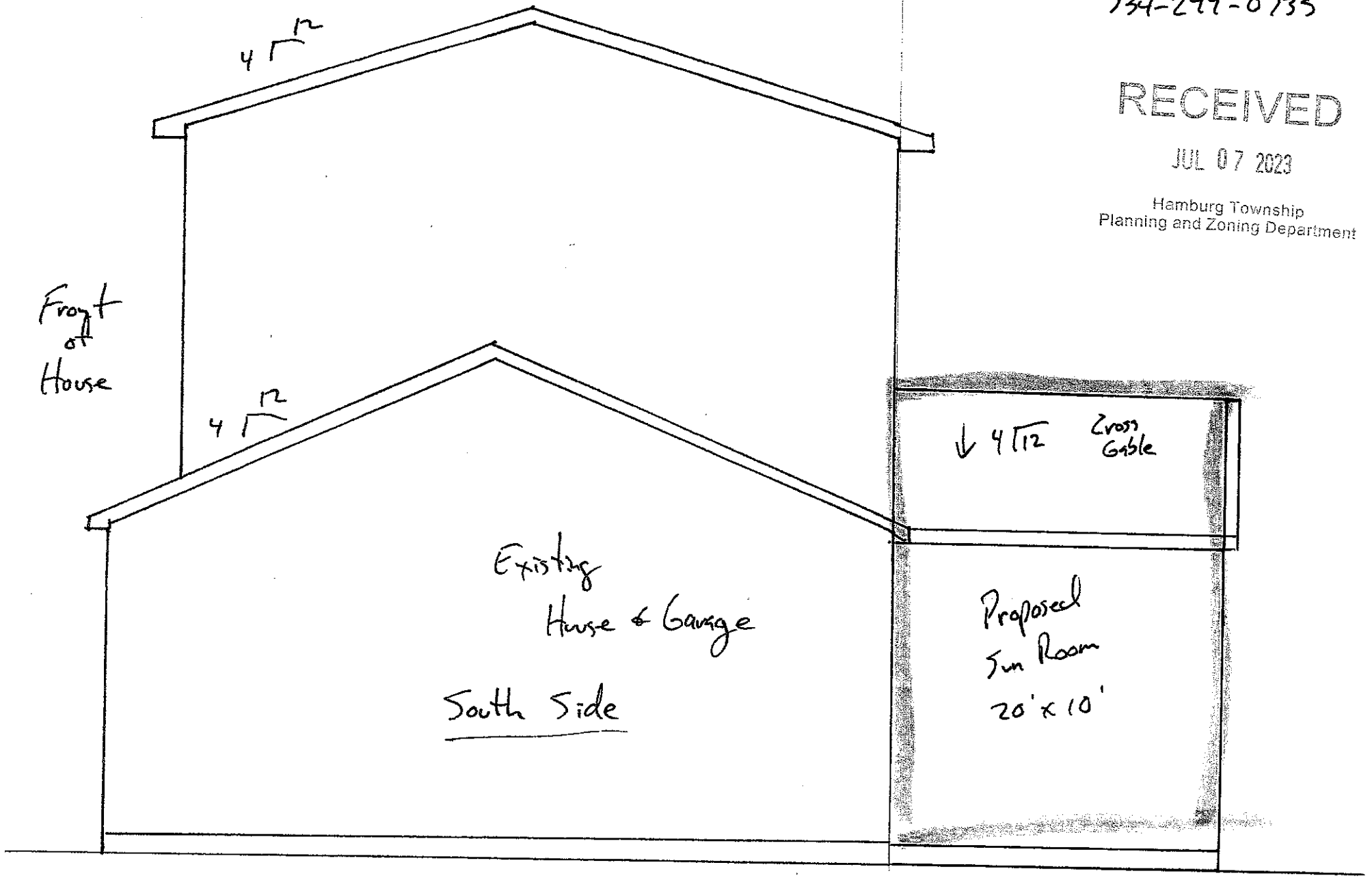

Scale: 1/4" = 1'

11765 Pleasant View Dr.

Back View

Existing

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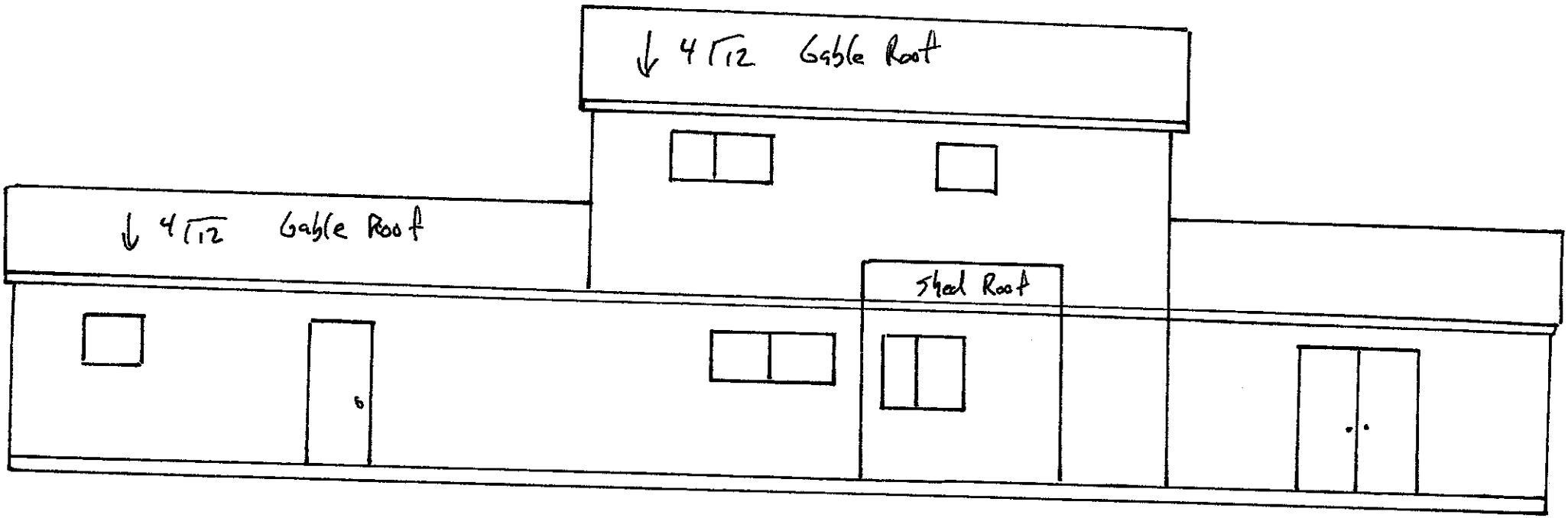

11765 Pleasant View Dr.

Scale: 1/8" = 1'

Back View

Tim Lee Construction
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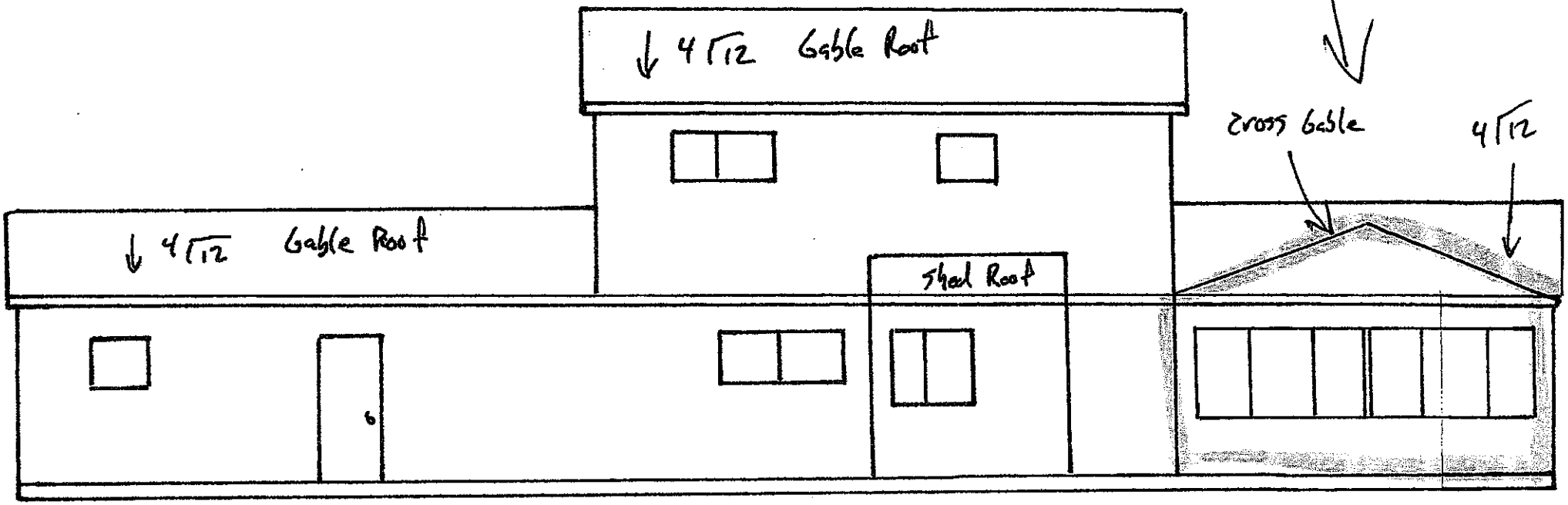
Proposed Back View



11765 Pleasant View Dr.

Scale: 1/8" = 1'

Hamburg Township
a great place to grow

10405 Merrill Road
P.O. Box 157
Hamburg, MI 48139
(810) 231-1000
www.hamburg.mi.us

ZONING BOARD OF APPEALS MEETING

Wednesday, July 12, 2023, at 7:00 PM
Hamburg Township Hall Board Room

MINUTES

CALL TO ORDER

Priebe called the meeting to order at 7:00 pm.

PLEDGE TO THE FLAG

Introduction of the new Planning and Zoning Director, David Rohr to the ZBA Members.

ROLL CALL OF THE BOARD
Members PRESENT:
Brian Ignatowski
Craig Masserant
Jason Negri
Joyce Priebe, Chair
William Rill

OLD BUSINESS
Correspondence – Mark Marjoros letter per easement issue from last month's case

Treasurer Negri stated that he appreciated the follow up letter and said that it addressed his concerns about the road easement.

CONSENT AGENDA

Approval motion made by Treasurer Negri, supported by Rill, to approve Zoning Board of Appeals Agenda for tonight as presented.

Voice Vote: Ayes: (5)

VOTE: MOTION CARRIED UNANIMOUSLY

CALL TO THE PUBLIC

A call was made with no response.

CURRENT BUSINESS

1. **ZBA 2023-003**
   Owner: Mounir and Tamra Haurani
   Location: Vacant parcel on Baseview Boulevard (nearest address to the south 2602 Baseview Boulevard)
   Parcel ID: 4715-31-401-021
   Request: Variance application to permit the construction of an accessory structure within the required front yard and wetlands setbacks per Sections 36-215 and 36-293.

Chair Priebe invited the applicant to address the members at the podium. Mrs. Haurani stated that she had three key points to provide to the members for their support her variance to fill in 0.01 wetlands on this vacant parcel to build her garage. The proposed garage structure is well under 800 sq ft allowed by our ordinance. The proposed road setbacks also meet our zoning standards. She stated that the Livingston County records erroneously stated that the wetlands on this parcel had been filled in 1989. The neighbors who had originally owned this parcel, and who have lived in the area for 40 years were present to attest to this fact. She mentioned they had sent in a letter to this fact as well. Chair Priebe stated that they had received it. Mrs. Haurani also wanted to correct the ZBA statement of the size of the wetland proposed to be filled of .1 to .01 acres of wetlands. The impact of the wetland fill would be minimal and that the impact on the environment is minimal. She let the members know that EGLE approved a maximum of 30 cubic yards of fill in the wetlands to build their accessory structure. The proposal would only use 28 cubic yards of fill for every 24 months. She said that building this accessory structure would improve the aesthetic quality of the neighborhood, replacing clutter outside a small shed. She continued that her neighbors have expressed their support of this project by letters.

Chair Priebe opened the meeting to Amy Steffens, the Planning and Zoning Director. Amy read her report giving the historical background on this case. Amy clarified that we are hearing this case because this project does not meet the zoning setback standards, but the applicant is making this case sound like it is a wetland fill variance. It is not. The structure does not meet the 50-foot setback from a regulated wetland or the 25-foot setback from the Baseview road extension. This hearing is for a setback variance request. The Township removed the requirement to review wetland filling requests if the applicant secured all state and federal wetland permits. The applicant is seeking to building into the regulated wetlands.

Amy continued to read her staff report as to how this variance does or doesn't meet all seven standards of review. Amy stated the issue here is determining what setback requirements to enforce and what wetland setback would be reasonable for this unique parcel and situation. She stated that Section 36-293 of the Hamburg Township Ordinance recognizes that wetlands play a significant role in flood mitigation and the ordinance is set up to protect these wetlands. She reminded the ZBA members that EGLE and the Township look at two different things in relation to filling in the wetlands. EGLE tries to minimize the project to minimize its impact on wetlands while encouraging as little fill as possible. They

do not have a setback from wetlands, but the Township does. The Township looks at wetlands as a natural feature to protect because it is unique to our community, especial in the Special Hazardous Flood Plain Area. The staff feels that this project could be proposed with a smaller footprint, closer to the road ways to protect the natural wetland features that are unique to the township.

Chair Priebe asked for clarification why there is only one street setback for the proposed accessory structure while there are two streets on this corner lot. Amy explained that accessory structures on a corner lot only needs to meet one street front yard setback, so that is why the side yard has only 10 feet setback. She opened the public hearing to the audience, but no one came to the podium. She reminded the members that two email correspondences were received in support of this ZBA case. One was from David Renken and the other was from Stan Liebaert. She then closed the public hearing.

She asked the members if they had any questions or comments. Treasurer Negi said he weighed all of the facts of this case and does not feel it meets all of the standards. He stated that we have review standards for a reason. He said sometimes there are circumstances that require minimum relief, but he stated that he does not see any compelling reason to divert from the standards in this case. Member Ignatowski asked for clarification if Amy's drawing would substitute an alteration for this project? Negri said she used the drawing to show that the architectural design could have been made smaller for the ZBA to consider this variance request. Negri explained that they do not negotiate with applicants but only decide on the cases as they appear before them. Chair Priebe mentioned in past cases, that applicants have asked for their ZBA cases to be tabled so they can propose something that would be allowable. Negri stated that an accessory structure with a smaller footprint would still have a significant encroachment issue regarding the wetlands.

Member Masserant asked her if her drawn example for a smaller accessory structure didn't require any fill for its construction. She assured him that it did not. Member Rill asked the applicant if she would consider a change in the footprint of the accessory structure. Mrs. Haurani stated that she had interpreted the zoning ordinance regarding WFR and water body as the same and thought that the 15 feet front yard setback applied to this case. Amy and the ZBA members explained that it would have been allowable on their home parcel across the street since it is adjacent to the body of water in the rear.

The architecture came up to the podium, explaining that the dimensions of the parcel as being 4,000 square feet. He stated that this structure is 16% of that sq. footage. He expressed that the safety at this street corner is the largest concern in his mind. The wetlands cover over 5 acres of land to the north of this vacant parcel. Most of the parcel is very flat. He stated that the neighboring lots have accessory structures built in similar locations on their out lots to store recreational equipment. He set up the location of this proposed structure to match the precedence of the other nearby structures. He stated that they tried to stay as far away from the rear lot line as possible, trying to meet the 50 feet setback from wetlands and using a minimal amount of fill.

Chair Priebe asked Amy if the ordinance requires a 50-foot setback, then would this regulation make this parcel unbuildable? Amy stated that not every lot is buildable, and that is why the variance process exists and why we have standards. The ZBA board can offer some variance relief if they deem it appropriate. The architect referred to Section 36-275 for the creation and alteration of waterbodies, stating that this project would only minimally impact the wetlands.

Chair Priebe turned to the ZBA members for further discussion. Member Masserant explained that he did not feel comfortable approving the filling in the wetlands since every lot is not buildable, no matter how much we

want them to be. Member Ignatowski stated that we are not trying to decide if this lot is buildable or not. He agreed that not every lot is buildable in the Township. Member Rill asked Amy when our ordinance changed regarding the filling of a wetland. Amy explained that such a proposed project would have to go through the Special Use Process with the Planning Commission prior to 2019. That was taken out to allow some fill into a wetland to create a pond. The applicant would still be required to get a state permit to dig and create this new wetland on their parcel. Removing this portion of our ordinance was to do away with a hinderance to people who wanted to create a pond, or a boardwalk through the wetlands. Such projects would be allowed by EGLE while not hindering the free flow of the wetlands. There was nothing for the ZBA to review regarding such projects. The wetland setback used to be 25 feet, but it was changed to 50 feet in 1980 or 1990. Amy asked Chair Priebe who could not recollect this change. Member Rill stated that he felt that we should allow this proposed project since it is minimal, since it meets the neighboring lots to the west, which are setback 25 feet from the wetlands.

Member Masserant asked if the wetland setback was required by the FEMA NFIP flood plain requirements. Amy said no, they are two totally different requirements. Member Rill stated he believed that this accessory structure meets a 25-foot setback, and there should be something that could be done to allow for this variance.

The architect wanted to present a few more things before the ZBA voted on this variance. He asked for clarification about being 50 feet from a body of water. Amy and the ZBA members explained that this was a natural features wetland variance not a OHM (Ordinary High Water Mark) waterbody variance. The applicant came up to the podium to ask if the ZBA would consider allowing a variance to build a smaller structure here. Treasurer Negri said that there was no structure that could be built 50 feet from the wetland on this parcel, with a safety at the corner. He explained that even Amy's example had no wetland setback and he said he would need something between the 0- and 50-foot setback. Amy and the ZBA members let the applicant know that if they wanted to propose something different and smaller, than we could table this case. The architect started to talk at his seat and Chair Priebe asked him to come to the podium to speak. He said that there is a balance between an accessory structure and a primary structure. He stated that the members should use precedence between this parcel and the neighboring western properties that have accessory structures in the same area as they are proposing. He again went on to stated that wetlands have aquatic creatures moving around or muck that make you sink to your hips when you walk through them. This parcel has none of those features. The architect and the applicant never requested to table this case.

> **Denial motion** was made by Member Masserant, supported by Member Ignatowski, to deny variance applicant ZBA 23-003 at 2602 Baseview Boulevard (TID 15-31-401-021) to permit the construction of an accessory structure within the required 25-foot front yard setback from Baseview Boulevard and encroaching into a regulated wetland (25-foot front yard setback required, Section 36-215; 50-foot setback from a regulated wetland required, Section 36-293).
>
> The variances do not meet variance standards 1, 2, 3, 4, 5, or 7 of Section 36-137 of the Hamburg Township Zoning Ordinance, and no practical difficulty exists on the subject site when strict compliance with the Zoning Ordinance standards is applied, as discussed at the meeting this evening, and as presented in this staff report.

Voice Vote: Ayes: (4) Members Masserant, Ignatowski, Priebe, and Negri Nayes: (1) Member Rill
VOTE: MOTION CARRIED

2. ZBA 2023-011

Owner: Robert and Jacqueline Sifton
Location: 8064 Kildeer
Parcel ID: 4715-13-101-069
Request: Variance application to permit the construction of a 720-squre foot pole barn in the required front yard setback of a corner lot per Section 36-215 and 36-293.

Chair Priebe opened the hearing up to the applicant. He stated that the variance request was to build a pole barn to store his equipment, such as a pontoon boat, rototillers, and log splitter. New neighbors say that such items are eyesore. She asked him to explain where his home is about his proposal. Mr. Sifton explained it is on an adjacent lot to the southeast. He let her know that these two parcels were combined via the zoning department.

Chair Priebe invited David Rohr, our new Planning and Zoning Director to read through his staff report, regarding the standards of review. Member Masserant asked if the shed would need to come down before the pole barn was built. Amy and David said no.

Treasurer Negri asked David if the pole barn could be built on this parcel without a variance. David said if it were proposed at a smaller size, he could. Chair Priebe asked for clarification about the undeveloped road easements on both sides of the parcel. The applicant said it was a walking easement for the neighborhood. She then opened the public meeting to the Public Hearing. There were no respondents, so she closed the public hearing portion of the meeting.

Member Masserant asked the applicant if his house is the southeast of this vacant parcel. Mr. Sifton said yes, it was off Kildeer. Much discussion was had regarding the setback requirements for accessory structures on vacant corner lots, as well as if the proposed accessory structure would fit in the buildable area of this parcel. The front yard setback to the existing road needs to meet the setbacks of the primary structure, which is 25 feet in the WFR district. This variance is to build the pole barn 10 feet from the main street that is being used currently.

Member Masserant stated that just because a resident wants to build a structure a certain way on their parcel is not reason enough to approve it through a variance, especially if they have room enough to build it according to our standards of our ordinance. Member Ignatowski reminded the members that the reason for the variance was to keep the present garden to its same size and location, and to minimalize the impact of the northern neighbor's view. Treasurer Negi stated that the current buildable setbacks are based on three undeveloped road easements that no one uses. He said he feels that this applicant might deserve some relief from our zoning ordinance.

Denial motion was made by Treasurer Negri, seconded by member Ignatowski, to deny variance application ZBA 23-011 Hubbard Dr. (TID 15-13-101-059) for a 10-foot variance request from the required 25-foot front yard setback, per Section 36-215 (5) because the variance does not meet variance standards one (1), two (2), or seven (7) of Section 36-137 of the Hamburg Township Zoning Ordinance, and no practical difficulty exists on the subject site when strict compliance with the Zoning Ordinance standards as discussed at tonight's meeting and as presented in the staff report.

The applicant asked for some clarification regarding the meaning of this denial. The members said that the pole barn needs to be built to all the zoning standard regulations. Chair Priebe let the applicant know that he can come into the Zoning Department and David can assist him in understanding what those requirements would be.

Voice Vote: Ayes: (5)
VOTE: MOTION CARRIED UNANIMOUSLY

3. **ZBA 2023-012**
   Owner: Christopher Withorn
   Location: 8695 Beach Ave
   Parcel ID: 4715-13-301-062
   Request: Variance application to permit the construction of a second-story addition within the required side, front, and ordinary high water mark setbacks per Section 36-186.

Amy stated that she prepared a memo, that this variance would not be needed if the proposed project is built as shown. As Amy looked over the construction building plans, she noticed that he is not adding an additional second story but only pitching the structure (flat roof to a pitched roof). He is only attic space, and according to our ordinance definitions, this is not considered a story or even a ½ story. He is only adding trusses, which can be given through the issuance of a land use permit. We will issue him a full refund. He had asked if he could still request a second story addition over the garage that is over the property line. Amy said that she let him know that proposal would be denied since it would not meet our current zoning ordinance.

APPROVAL OF THE MEETING MINUTES

Approval motion made by Treasurer Negri, seconded by Member Masserant, to approve the June 14, 2023, ZBA Meeting minutes as presented.

Voice Vote: Ayes: (5)
VOTE: MOTION CARRIED UNANIMOUSLY

Amy gave an update regarding the 10190 Imus Rd -after the fact variance request in March 2023. It was regarding a boat house without the proper land use and building permits. This project is entirely in the flood plain. She reminded the ZBA members that they approved it under the township attorney's legal advice. Mr. Becker had brought in the EGLE Floodplain Permit that was issued for this project today. Now the applicant can provide use with a land use application and an elevation certificate that is required for any development in the floodplain in our township. Once we issue them the official land use permit, then the applicant will need to go to Livingston County Building Department for an after the fact building permit.

ADJOURNMENT

Approval motion to adjourn at 8:16 pm was made by Treasurer Negri, seconded by Member Ignatowski.

Voice Vote: Ayes: (5)
VOTE: MOTION CARRIED UNANIMOUSLY

Respectfully submitted,

Lisa Perschke

Planning/Zoning Coordinator & Recording Secretary

Amy Steffens and David Rohr

Planning & Zoning Directors

The minutes were approved as presented/corrected: _____

_____

Joyce Priebe, Chair