
**Hamburg Township
Zoning Board of Appeals
Wednesday, January 11, 2023**

AGENDA

- 1. Call to order**
- 2. Pledge to the Flag**
- 3. Roll call of the Board**
- 4. Correspondence**
- 5. Approval of agenda**
- 6. Call to the public**
- 7. Variance requests**
 - a. **ZBA 2022-0013**

Owner: Eugene Bough
Location: 3264 Rush Lake Road
Parcel ID: 15-17-302-088
Request: 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.
- 8. New/Old business**

Approval of December 14, 2022 meeting minutes
- 9. Adjournment**



FAX 810-231-4295
PHONE 810-231-1000

P.O. Box 157
10405 Merrill Road
Hamburg, Michigan 48139

Item 1.

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ZBA Case Number 22-0013
\$500.00



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 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: 12-7-22
2. Tax ID #: 15- 17-302-088 Subdivision: Herndon's Rush Lake Lot No.: 567
3. Address of Subject Property: 3264 Rush Lake Road Pinckney mi 48169
4. Property Owner: Eugene & Kathleen Bough Phone: (H) 517-375-2529
 Email Address: Monie.Shot@yahoo.com (W) _____
 Street: 3264 Rush Lake Road City Pinckney State mi
5. Appellant (If different than owner): _____ Phone: (H) _____
 E-mail Address: _____ (W) _____
 Street: _____ City _____ State _____
6. Year Property was Acquired: 3-2018 Zoning District: WFR Flood Plain NO
7. Size of Lot: Front 40' Rear 42' Side 1 77.2 Side 2 84.4' Sq. Ft. _____
11. Dimensions of Existing Structure (s) 1st Floor 901 2nd Floor 1093 Garage 440
12. Dimensions of Proposed Structure (s) 1st Floor _____ 2nd Floor _____ Garage _____
13. Present Use of Property: New Build Home
14. Percentage of Existing Structure (s) to be demolished, if any _____ %
15. Has there been any past variances on this property? Yes ☒ No _____
16. If so, state case # and resolution of variance application 22-0092 APPROVED
17. Please indicate the type of variance or zoning ordinance interpretation requested:
Requesting Retaining wall 27' foot long 63" high 15' from Existing Deck
to Retain Dirt next to House with 35' Variance from Lake

HAMBURG TOWNSHIP
 Date 12/09/2022 12:34:50 PM
 Ref ZBA2200-13
 Receipt 1281585
 Amount \$500.00

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

- 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.

TOO Steep OF Slope FROM WALKOUT Basement TO Lake

NEED to Return DIRT Next TO house

- 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.

YES IS NECESSARY

- 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.

NO I won't

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

NO won't AFFECT

- 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.

NO Small Lot Steep hill

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

NOT Changing Single

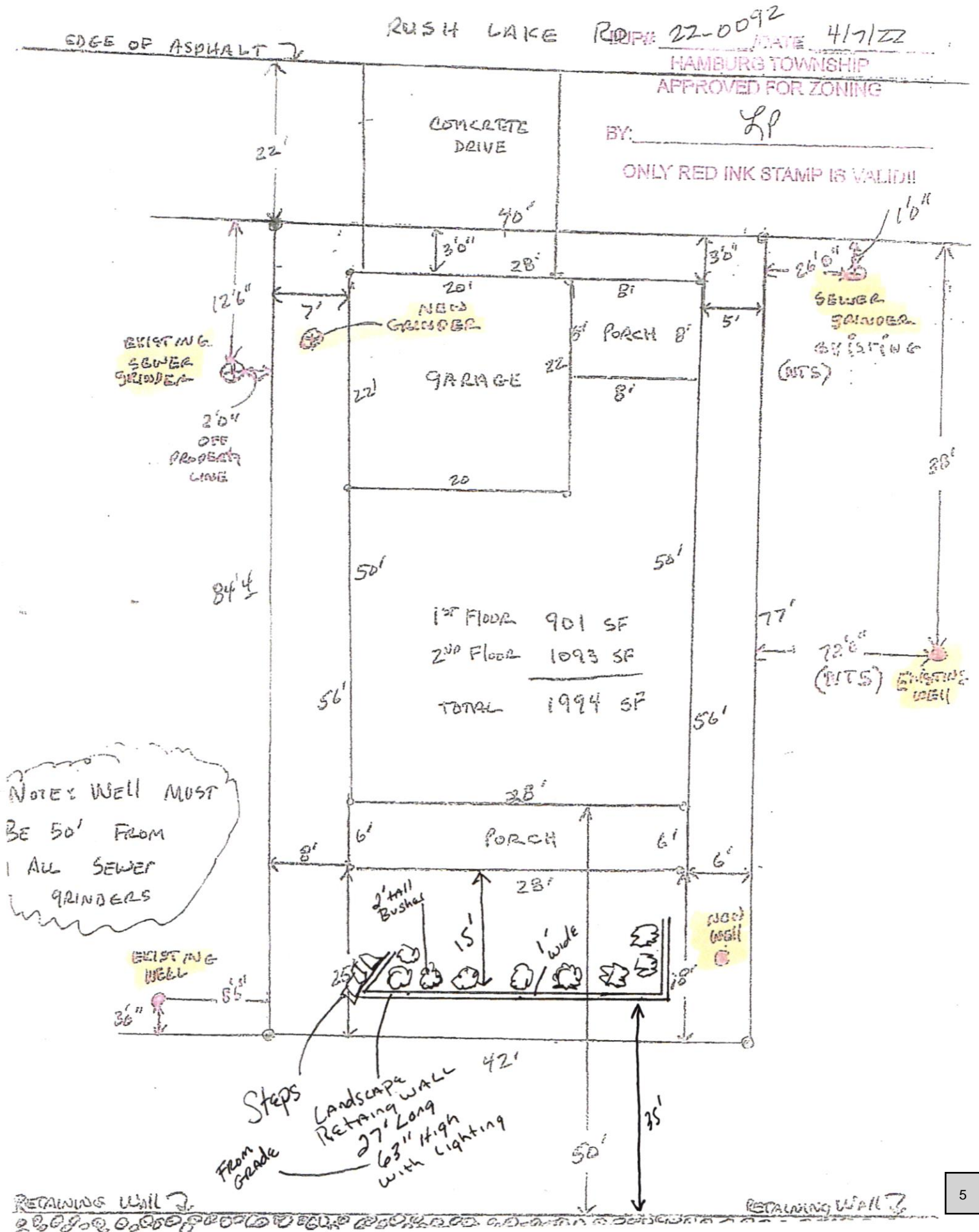
- g) The requested variance is the minimum necessary to permit reasonable use of the land.

NOT changing Single

- 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.
- 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).

Eugene Boyl 12-7-22
Owner's Signature Date

Eugene Boyl 12-7-22
Appellant's Signature Date







Zoning Board of Appeals Staff Report



AGENDA ITEM: A

Zoning Board of Appeals
TO: (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



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

Supervisor Pat Hohl Clerk Mike Dolan Treasurer Jason Negri Trustees Bill Hahn, Patricia Hughes, Chuck Menzies, Cindy Michniewicz

**Hamburg Township
Zoning Board of Appeals
Wednesday, December 14, 2022, at 7pm
HAMBURG TOWNSHIP HALL BOARD ROOM
MINUTES**

CALL TO ORDER

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

PLEDGE TO THE FLAG

ROLL CALL OF THE BOARD-

Members PRESENT:

Jim Hollenbeck (Alternative)
Craig Masserant
Jason Negri
Joyce Priebe, Chair
William Rill

ABSENT:

Deborah Mariani

CONSENT AGENDA

Motion to approve Zoning Board of Appeals Agenda for tonight.

Approval Motion made by Member Negri, seconded by Member Rill.

Voice Vote: Ayes: (5) Nays: (0) Absent: (1)

VOTE: MOTION CARRIED UNANIMOUSLY

GENERAL CALL TO THE PUBLIC

NEW BUSINESS:

Variance Requests

1. **ZBA 2022-0011**

Owner: Doug Hill
 Location: 7878 E M-36
 Whitmore Lake, MI 48189
 Parcel ID: 15-25-200-003
 Type: Village Center (VC)
 Request: Variance application to allow the use of the existing driveway for a commercial use. The existing driveway will not meet the commercial driveway spacing requirements of 300 feet on a street with a speed limit over 45 miles per hour (Section 36-339 Driveway Spacing Standards).

Chad from Green Tech Engineering gave his testimony regarding the variance requested. Site limits ability to locate the driveway 300' (240' is the farthest that can be established), which would hinder the owner/developer from providing the off-street parking (for Hamburg Township Ordinance) and reduce the on-site storm pond storage required by Livingston County. Relocation of the driveway would cause issues with rerouting current utilities onsite, as well as force development of incoming delivery road to site to create with a 90-degree orientation rather than a straight shot. M-DOT said they have no issues with the site as it is.

Scott explained that this is a variance for the setback of the driveway. Applicants have gone through site plan review already, receiving conditional approval based on this hearing. Scott's staff report listed that this variance could meet all of the standards of the Zoning Ordinance.

Member Masserant clarified that the spacing requirement of our ordinance is based on aesthetics and not safety. Scott explained that the applicant will be required to have MDOT approvals before the Planning and Zoning Department can issue them a land use permit. Member Negri asked Scott for more clarification regarding the shared access driveway with the Baker Building. When going through a brand-new site plan review today, we would require that this would be a condition for approval. This is not retroactively required now.

Member Priebe stated that she sees a practical difficulty with this site allowing the applicant to meet the 300' requirement of our zoning ordinance. Members asked whether Chad and Doug had approached the Baker Building owners about partnering on a shared driveway since both of their properties are in close approximate and where originally designed as residential lots that have evolved into commercial locations. Member Negi shared that not having a shared access driveway could make driving in this area dangerous on M-36.

CALL TO THE PUBLIC- A call was made with no response.

Approval Motion by Member Rill, seconded by Hollenbeck, that the Zoning Board of Appeals approves variance request ZBA 22-0011 at 7878 E. M-36 to allow the commercial driveway for this lot to be less than 300 feet from the commercial driveway at 7936 E M-36 (Section 36-339 (a)(1 and 2)), because the variance requests 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 and as presented in the staff report. The Board directs Staff to prepare a memorialization of the ZBA's findings for the request.

Voice Vote: Ayes: (4) Masserant; Hollenbeck; Priebe; Rill Nays: (1) Negri Absent: (1)

VOTE: CARRIED (4:1)

2. ZBA 2022-0012

Owner: D + G Real Estates LLC
 Location: 9704 Kress Rd
 Pinckney, MI 48139
 Parcel ID: 15-21-405-016
 Type: Neighborhood Service (NS)
 Request: Variance application to allow construction of a second story addition and a roof top deck on an existing structure. The addition and deck will be 17 feet 4 inches from the front(east) property line and the deck will be 18 feet 5 inches to the side(north) property line with street frontage. 25 feet is the required setback for the addition and 19 feet is the required setback for the elevated deck (section 36-187 and 36-230).

Chair Priebe asked the applicant/owner, David Woolley to speak. Make 2/3 of building a party store business and then 1/3 of building a coffee shop business.

Scott explained that the existing building encroaches into the required set-back. Tonight's meeting is just the variance for the encroachment into the required right-of-way setbacks for the building, and not the use of the building as an apartment. The roof top deck on the north elevation encroaches 6 inches into the required setback for a deck. It only encroaches 1' on the east elevation, at the lowest level but it only encroaches 6 inches at the top level. The addition encroaches 7' into the required setback to allow for bathroom units in the upper residential units. This project will have to go through a Special Use Permit and a Site Plan Review Process. Scott's report addresses the right-of-way setback encroachments and what the impacts those encroachments will have on the neighborhood. Most of the encroachments will impact the east side of the building, looking over two roads Beverly and Fireside.

CALL TO THE PUBLIC- A call was made with no response.

Scott reminded the ZBA Board that the marina down the street had received a variance for the approval of a residential unit above the marina, which was much closer to the roadway easement than this project, and much of their parking was in the roadway.

Members Negri, Masserant, and Hollenbeck shared similar statements that the encroachments that could normally impact other locations, would not matter in this situation due to the orientation of the surrounding residential units.

Approval Motion made by Member Negri, seconded by Member Masserant, that the Zoning Board of Appeals approves variance request ZBA 22-0012 at 9704 Kress Road to allow construction of a second story addition and a roof top deck on an existing structure. The addition and deck will be 17 feet 4 inches from the front(east) property line and the deck will be 18 feet 6 inches to the side(north) property line, where 25 feet is required for the addition and 19 feet is required for the elevated deck (sections 36-186 and 36-230(2)). The approval is based on the fact that the variance request meets 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, and as presented in the staff report. The Board directs Staff to prepare a memorialization of the ZBA's findings for the request.

Voice Vote: Ayes: (5) Nays: (0) Absent: (1)

VOTE: MOTION CARRIED UNANIMOUSLY

APPROVAL OF THE MEETING MINUTES

Motion to approve the Zoning Board of Appeals Meeting Minutes from November 9, 2022, as revised with correct spelling of Member Mariani's last name.

Motion made by Hollenbeck, Seconded by Masserant.

Voice Vote: Ayes: (5) Nays: (0) Absent: (1)

VOTE: MOTION CARRIED UNANIMOUSLY

ADJOURNMENT

Motion to adjourn at 7:40 pm.

Motion made by Member Negri, Seconded by Member Rill.

Voice Vote: Ayes: (5) Nays: (0) Absent: (1)

VOTE: MOTION CARRIED UNANIMOUSLY

Respectfully submitted,

Lisa Perschke

Planning/Zoning Coordinator & Recording Secretary

Scott Pacheco

Zoning Planner & Administrator Interim

The minutes were approved as presented/corrected: _____

Joyce Priebe, Chair