

APPROVED
JULY 8, 2024

**CITY OF WIXOM
ZONING BOARD OF APPEALS MEETING
49045 PONTIAC TRAIL
MONDAY, MAY 13, 2024**

The meeting was called to order by Chairman Caplan of the Zoning Board of Appeals at 7:08 p.m. at which time allegiance was pledged to the American flag.

BOARD: Jeff Caplan (Chairman); Roy Thorsell; Michael Schira; Steven Winters; Ray Cousineau; Jim Hutchens; M. Helsom

ABSENT: None

OTHERS: Doug Lewan (Carlisle Wortman & Associates), Planner; Drew Benson, Assistant City Manager, and Director of Economic Development; Carol Rosati, City Attorney; and Mona Freiburger (Recording Secretary)

Determination of a Quorum:

A quorum of the Zoning Board of Appeals was present for this meeting.

Agenda:

No additions or changes were made to the agenda.

Approval of the December 11, 2023 Zoning Board of Appeals Meeting Minutes:

MOTION and seconded by Board Members Winters and Thorsell to approve the April 8, 2024 Zoning Board of Appeals Meeting Minutes.

VOTE: **MOTION CARRIED**

CORRESPONDENCE/INFORMATION

April 9, 2024 City Manager Update
April 24, 2024 City Manager Update

CALL TO THE PUBLIC

There were no comments made by the public.

OLD BUSINESS:

None

NEW BUSINESS:

1. **PUBLIC HEARING FOR VARIANCE REQUEST #ZBA 23-006: 2028 HOPKINS, WIXOM, MI. 48393:** The applicant is seeking three dimensional variances to 1). Allow a porch and/or deck (no gazebo) with a rear yard setback of six (6) feet rather than the minimum setback for a porch and/or deck of 20 feet pursuant to Section 18.13.030.C. 2) to allow a gazebo covering a porch and/or deck of six (6) feet rather than the required 35 feet pursuant to Section 18.13.030. C.3. 3) to allow the Zoning Board of Appeals to consider permitting the gazebo on the waterside setback as an accessory structure pursuant to Section 18.13. 030.C4. The property is zoned R-3 One-Family Residential. The property is zoned R-3, One-Family Residential, and the parcel number is 17-29-151-010.

Discussion:

The applicant made improvements to his property at 2028 Hopkins without benefit of either zoning or building permits. The applicant now requests after the fact approval of these improvements through variance requests.

The subject improvement is a 169 square foot porch that encroaches into the required porch setback of 20 feet for a rear yard (same as waterside) setback. Further, because the porch contains a covered structure (gazebo), the gazebo is subject to the 35-foot rear yard (same as water side) setback of 35 feet of a covered structure. If uncovered, a minimum 20-foot setback is required; if covered, that setback increases to 35 feet. The applicant's site plan shows a rear yard (waterside) setback of six (6) feet.

In addition to the above requirements, lots having water frontage shall maintain an open and unobstructed water side setback. Only the ZBA has the authority to allow accessory structures within the water side setback.

Considerations for the proposed variance request is listed in the Memo dated April 8, 2024 from Carlisle Wortman Associates, Inc.

Findings of Fact are summarized below (by Carlisle Wortman Associates):

1. We find no exceptional or extraordinary circumstances that would apply to this property that would warrant the location of the existing deck and pergola.
2. We find that the strict letter of restrictions regarding rear yard (waterside) setbacks does not unreasonably prevent the use of the property as it has been used as a single-family home for many years;

3. Due to the modest size of the deck (porch) and pergola and the fact that covered boat wells are permitted in the rear (waterside) setback, we do not believe proposal would be significantly detrimental to the area;
4. We do not believe that the granting of the variances in question would impair adequate light and air to adjacent properties and has no impact on street or public safety of the residents of the City;
5. The current variance requests are self-created since the deck (porch) and pergola were installed without the required permits and are now in existence.

Recommendation by Carlisle Wortman Associates, Inc.: As conditions a, b, and e (of the memo) have not been met, Carlisle Wortman Associates recommend denial of the subject variance request. Specifically, the applicant has not shown Extraordinary Circumstances, Practical Difficulty/Substantial Justice, and the variance is self-created.

Board Member Winters asked that he be recused from this case as he knows the applicant. The Board allowed Mr. Winter's recusal and he left the room.

Chair Caplan stated for a request to be successful, an affirmative vote of five members of the Board is required. There are only five members now at the dais, so all must vote in favor of any motion made on this application.

Mr. Mark Demorest, Demorest Law Firm, Royal Oak, MI, introduced himself to the Board.

Mr. George Ansara, 2028 Hopkins Drive, Wixom, MI. 48393, applicant, introduced himself to the Board.

Mr. Demorest stated they were glad to have the opportunity to talk with the Board this evening. Mr. Demorest indicated a couple of years ago, Mr. Ansara purchased his house and hired a contractor who installed a 13x13 square foot concrete pad, not a deck. The concrete pad on his property is not too far from the water. On top of the pad is a removable gazebo, it is not a permanent structure. Photographs are enclosed in the application and packet to the board members.

Mr. Demorest indicated he disagreed with some of what has been said by the City's planner. The planner described the concrete pad as a deck, but Mr. Demorest indicated a deck is defined as a platform structure supported by pillars or posts, under the definition of deck in the zoning ordinances, Section 18.24.030. Mr. Demorest stated a concrete pad is not a deck as defined by the ordinance, and he did not think the two sections cited regarding a deck apply at all, and that a variance is not required for a concrete pad, which is not a deck.

Mr. Demorest commented the other issue to be addressed is whether this was self-created. He pointed out Mr. Ansara hired a contractor to do the work. Mr. Ansara expected that if any permits were needed, the contractor would pull the permits. In this case, Mr. Ansara hired a contractor. The contractor is now deceased. The contractor

was expected to obtain a permit if necessary; that was part of his responsibility. In addition, the concrete pad is 13 x 13, or 168 square feet. No building permit is required for a concrete pad of that size. There is no dispute about that.

Mr. Demorest stated that the gazebo, which is removable, is not a permanent structure in his opinion. If it is viewed as being an accessory structure under Section 18.13.010 in the rear yard, the setback is three feet from the rear lot line, 3 feet from the side lot line. Mr. Demorest stated this is not a deck, the standards for a deck do not apply. He also does not believe that it is a porch.

Mr. Demorest commented, in his view, if there is any variance required, they are seeking the Board's approval. The Board has the authority to approve an accessory building or accessory structure that is three feet from the rear lot line, and three feet from the side lot line. The concrete pad meets those requirements. He does not think a variance is needed.

Mr. Demorest pointed out that the next-door neighbor, to whom the concrete pad and the gazebo are most closely located, have no objection. Mr. Demorest read the letter from Steve and Ganno Soave, 2016 Hopkins Drive, who agrees with the applicant and has their approval of the construction.

Mr. Demorest stated Mr. Ansara acted in good faith. Mr. Ansara spoke to the president of the homeowner's association before this was installed, understood that he had permission from the homeowner's association, hired a contractor to do the work, and no city permit was required for the construction.

Chair Caplan commented that a lot of the legal interpretations that Mr. Demorest brought up which are inconsistent with the City's interpretation, would have been handled before he came before the Board. The Zoning Board is going to consider a variance based on the evidence in front of the Board. Ms. Rosati stated that that the Board is not making legal determinations here. The applicant is before the Board, and it is their obligation to prove the standards to show practical difficulty. The Zoning Board has the City planners report. Ms. Rosati indicated she understood what Mr. Demorest had said, but a lot of those statements are inconsistent with the clear language of the ordinance, which the planner can explain to the Board. The Board has the right to decide these variances. The Board has the planners' report and the planner's and attorney's position on the matters raised by Mr. Demorest.

Board Member Cousineau commented with respect to the definition of the porch and the gazebo are temporary, in his mind, this is important to this discussion. He indicated he would like to hear the City planner's response.

Mr. Lewan indicated this discussion is not new and was raised, previously, by the applicant's attorney. The short answer is the City does not agree. The ordinance clearly indicates with regard to rear yards for decks and porches, decks and open, unenclosed and uncovered porches including those constructed on the ground and/or constructed of

brick, concrete or pavers are permitted to extend into the minimum required rear yard setback provided certain standards are met. Mr. Lewan read the express language contained in Sec. 18-13.030(C) which is applicable to both decks and porches, including those constructed on the ground, constructed of brick, concrete or pavers. Mr. Lewan thought this provision in the ordinance goes beyond the definition of deck and talks about what they would consider a porch or paved area, which is what the applicant constructed. Mr. Lewan stated he that he does not agree with Mr. Demorest's reading of the ordinance.

Ms. Rosati commented the City's position is this is not considered a deck, it is considered a porch, and it is regulated under the section. Variances that are required from that section because they put a porch in. It also would apply to decks, but it also applied to the concrete porch installed by the applicant.

Board Member Cousineau asked if we are talking about a concrete porch; same standards apply to a concrete porch as a deck? With respect to the gazebo, that being a temporary structure, does that have any impact? Mr. Lewan answered no; no portion of either a deck or porch located in a required rear yard shall contain covered structures such as gazebos, screened or covered porches per the express language of the ordinance. It indicates that decks or porches sheltered partially or fully by a permanent or temporary canopy, awning, metal lattice, pergola or any other materials shall be considered covered. The ordinance clearly, in Mr. Lewan's opinion, indicates that a temporary pergola is considered covered for the purposes of the ordinance.

Mr. Demorest stated deck is defined in the ordinance as something above ground; porch is not defined in the definitions of the ordinance. He thought there is ambiguity at the very least in the ordinance; considering the variance, Mr. Demorest thought this is something that ought to be taken into consideration. One of the factors, is this self-made? Mr. Demorest stated anybody who read the ordinance, read the definition of deck, could logically conclude that a concrete pad is not a deck or a porch. Mr. Demorest asked the Board to consider this as a variance and assume that a variance is required. The hardship is that Mr. Ansara hired a licensed contractor to install this and expected the contractor to do what was necessary. The hardship now is to have to dig up the concrete pad, and perhaps put it in a different place. In the alternative, the third item, is to approve this as an accessory structure. An accessory structure only required three feet of setback from the side and the front. There is at least three feet on both sides according to the measurements submitted. Mr. Demorest stated the fairest thing to do here is to treat it as an accessory structure and to grant the variance and location based on the circumstances.

Ms. Rosati stated the fact that it may be an accessory structure doesn't relieve the applicant of other regulations related to that accessory structure. Ms. Rosati indicated this is turning into an oral argument in court which is not appropriate.

Ms. Rosati stated that based on the plain language of the ordinance, the applicant is required to get these variances. It is clear in the ordinance language. In addition, this is

the way the City has historically interpreted this ordinance, which under the law is the interpretation. Ms. Rosati indicated we need to move beyond this argument on whether or not the applicant needs a variance and address the standards for practical difficulty. Did the applicant meet all the standards?

Board Member Hutchens asked if the ordinance distinguishes between a structure that can be disassembled and a structured that can be removed? In the paperwork given by the applicant, there was a picture of a joint on the construction of the gazebo which showed a screw that could be unscrewed or disassembled. Mr. Lewan stated that does not make a difference. The section of the ordinance that was read previously which states decks or porches, sheltered partially, or wholly, by a permanent, temporary canopy, permanent or temporary, canopy, awning, metal, lattice, pergola or any other materials shall be considered covered. Under the ordinance, whether it is permanent or temporary, it is considered covered for the purpose of this ordinance.

Assistant City Manager Benson commented the ordinance sections that are cited, Chapter 18.13.030, specifically pertains to a scenario such as this are all under the accessory, buildings and uses section of the ordinance.

Board Member Hutchens asked how the Board should proceed on this particular case at this point. Do we presume for the purposes of this meeting that a variance is needed? Chair Caplan stated the Board is strictly going to address the variances right now as they are given in the request, PZBA 23-006. It is not up to the Board to interpret the legal part of it; we must follow what the planners' have told us based on the planners' opinion of the ordinance.

Mr. Demorest commented the applicant hired a licensed contractor who put it in the wrong place according to the City's position. It is a very small concrete pad or gazebo. Mr. Demorest indicated the City planner in their proposed finding of fact states it would not be significantly detrimental; there is not any issue presented to the neighbors. Mr. Demorest believes because of the contractor's actions it is not self-created.

Chair Caplan asked when the concrete pad was installed. Ms. Ansara stated September or October, 2022. Chair Caplan stated permits are required to be in vision and are supposed to be posted. Mr. Demorest stated it was their understanding for a concrete pad less than 200 square feet that a permit is not needed. Mr. Ansara, based on his discussions with the HOA and the contractor, did not think any permit was necessary.

Board Member Thorsell wondered how this came to the City's attention after two years. Mr. Demorest answered that a complaint was filed.

Board Member Cousineau wanted clarification. Was the Board deciding a request for a variance with respect to the concrete slab/porch that required a setback of 20 feet to allow 6 feet? Ms. Rosati stated yes.

Assistant City Manager Benson summarized this discussion. He stated there are three key pieces. No individual piece can work without the others for this particular application and scenario to work. For all lots having water frontage, accessory structure shall be permitted after review and approval of plans by the Zoning Board of Appeals. Assistant City Manager Benson stated it is our interpretation of the ordinance under any circumstances for an application like this, the application would come before the Board. In this particular scenario, the way it was constructed and where it currently is would require those two variances. It requires a larger variance or larger rear yard setback of 35 feet because it is covered. If it weren't covered, it would only require 20 feet of setback. The applicant needs all three pieces but because it is covered, it would require a larger setback for the ordinance.

Ms. Rosati stated it is an accessory structure, but there are different regulations for various types of accessory structures. Section 18.13.030, deals with this situation. If the accessory structure complied with all the setbacks per the ordinance, which it does not, the applicant would still come before the Zoning Board of Appeals for approval of the accessory structure.

Board Member Thorsell indicated the survey measurements are taken from presumably the water line. Assistant City Manager Benson indicated the property lines in this particular plat are unique. The original plat does state that all lots with water frontage are six feet from the water's edge. ITC does own the waterfront portions of various lots in this subdivision, but the City confirmed with ITC that they do not claim any portion of 2028 Hopkins or some of the other properties in that alcove.

Chairman Caplan opened the public hearing.

Ms. Shannon Lorenger, 2031 Hopkins, across the street neighbor of applicant, stated she did not see a problem at all here. The applicant is a good man, and he has done nothing wrong. He installed a pergola, and it is beautiful. Ms. Lorenger indicated the pergola benefits the neighborhood and she appreciates the applicant's work that he has put into the house.

Chairman Caplan closed the public hearing.

Board Member Cousineau commented the City has made their position clear with respect to the dimensional variances needed and the Board must rely on that. He commented the application stated their hardship is that they hired a contractor and the applicant expected that contractor to pull all necessary permits for construction, which he did not for whatever reason. Board Member Cousineau questioned whether this is a legitimate hardship. Board Member Cousineau stated no, it is not a valid hardship. A contractor is hired, they are expected to do the job per code. If it is a valid hardship, then the Board could act on that. Ms. Rosati stated that is only one of the factors the Board is supposed to consider. The applicant is supposed to meet all the standards for a variance. The Board must work through each of the variance factors in making their decision.

Board Member Schira commented he did not think any of the standards have been met except possibly the public safety and welfare standards.

Mr. Lewan read out the five standards to be met by the Zoning Board of Appeals. The first one is extraordinary circumstances. For exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply, generally, to other properties in the same zoning district. Is there something unique to this property that is different than other properties similarly zoned or similar situation? The second one is practical difficulties, substantial justice. Compliance to the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, density or other dimensional provisions would unreasonably prevent the use of the property. Is there something unique to this property, is the lot pie shaped, is it small size, big size that is a practical difficulty? The third item is impact on surrounding neighborhood. A variance will not be significantly detrimental to adjacent property in the surrounding neighborhood or interfere with or discourage the appropriate development, continued use or value of adjacent properties in the surrounding neighborhood. Is this going to harm the neighboring properties? The fourth item is public safety and welfare. The granting of variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets or increase the danger of fire or endanger the public safety, comfort, morals or welfare of the inhabitants of the City. The last is, not self-created. The immediate practical difficulty causing the need for the variance request was not self-created by the applicant.

MOTION and second by Board members Schira and Thorsell to deny **VARIANCE REQUEST #ZBA 23-006: 2028 HOPKINS, WIXOM, MI. 48393**: The applicant is seeking three dimensional variances to 1). Allow a porch (no gazebo) with a rear yard setback of six (6) feet rather than the minimum setback for a porch of 20 feet pursuant to Section 18.13.030.C. 2) to allow a gazebo covering a porch of six (6) feet rather than the required 35 feet pursuant to Section 18.13.030. C.3. 3) to allow the Zoning Board of Appeals to consider permitting the gazebo on the waterside setback as an accessory structure pursuant to Section 18.13.030.C4. Based on the planner's report, the applicant has failed to demonstrate the required standards for a variance including the failure to demonstrate extraordinary circumstances, a failure to demonstrate practical difficulties, failure to show that substantial justice would be done by granting the variances, as well as the potential impact of surrounding neighborhood, and the fact that request is self-created.

After the vote, Board Member Winters re-entered the room.

VOTE:

MOTION CARRIED

2. **PUBLIC HEARING FOR VARIANCE REQUEST #PZBA 24-002: 49461 GRAND RIVER, WIXOM, MI. 48393:** The applicant is seeking a sign variance to allow for 100% window sign coverage for a portion of the site, rather than the maximum permitted 25% coverage pursuant to Section 18.16.050. a.1. The property is zoned B-3 General Business. The property is zoned B-3, General Business, and the parcel number is 22-07-476-006.

Discussion:

A new Jimmy Johns franchise was approved for building permits for an internal build-out at this location. Per those plans, the applicant constructed walls behind nine (9) windows and one (1) suite door along the site's east elevation in order to accommodate interior layout needs. Drawings submitted to the building department indicated the walls construction and decals being used to cover the windows in question. Drawings were approved and a note was provided stating sign permits are a separate process from building department reviews.

The applicant supplied the concept decal coverage prior to a sign permit application. The applicant was informed that the decals violated Section 18.16.050.a.1 of the City's zoning ordinance which states: "Window signs are permitted but shall not exceed twenty-five percent (25%) of the window area of the façade. Window signs shall be placed to maintain clear vision into the building for public safety reasons."

Considerations for the proposed variance are included in Carlisle Wortman Associates Memo to the City of Wixom, Michigan dated March 20, 2024.

Recommendation by Carlisle Wortman Associates: Based on the criteria noted in the Memo dated March 20, 2024, Carlisle Wortman Associates recommends denial of the subject variance to allow one hundred percent (100%) window sign coverage for nine (9) windows and one (1) suite door along the east elevation of the building rather than the maximum twenty-five percent (25%) window sign coverage pursuant to Section 18.16.050. a.1.

Mr. Luk Dedvukaj, 49761 Grand River, Wixom, MI, general contractors for Jimmy Johns introduced himself.

Mr. Tony Tomey, owner of Jimmy Johns, 49761 Grand River Avenue, Wixom, MI introduced himself.

Mr. Dedvukaj commented they were at the meeting to ask for permission to install the graphics in the windows at the east elevations. The graphics were in the blueprints when they applied for permits.

Chair Caplan commented the permits stated that the applicant had to get some clarifications on the signage. There wasn't approval for signage; it was approval for the buildout.

Board Member Winters asked if the applicant owned the building. If not, are they renovating with the owner's permission. The applicant stated they do not own the building but they have the owner's permission. The windows are covering the internal wall structures/insulation. A wall was built to be able to install the drive through. Instead of painting the window black, they asked to install window graphics. Behind the window is insulation. The wall is permanent and will remain.

Mr. Dedvukaj commented it is a nice signage picture. He said that based on his experience, if the window is painted black, the window will crack from the heat. The window is vinyl covered to inhibit the appearance of the insulation that is installed on the back side of the new interior walls.

The ordinance allows 25% window coverage, not 100%. Assistant City Manager Benson commented there was a specific condition listed in the building department approval letter for signage dated September 28, 2023, which had gone with their conditional approval for the building permit.

Mr. Dedvukaj stated they applied for the sign; this is graphics. They applied for two signs, and one was approved. Mr. Dedvukaj indicated the City did not say anything to them on the day they asked for the Certificate of Occupancy. The vinyl sign shows in the blueprint.

Board Member Schira asked if the applicant had considered shrinking the signage to be in the center, larger frame, that might be blacked out, to prevent it from seeing the insulation when we look inside the window?

Chair Caplan indicated the signs that he has already doesn't detract from the window graphics. The applicant is still allowed 25% coverage on the window for more signage. The ordinance doesn't allow the applicant to cover the window 100%; only 25% coverage is allowed. Mr. Dedvukaj stated they cannot work with 25%, corporate will not approve it. Corporate has their own design; the applicant must follow that design.

Assistant City Manager Benson commented only 25% of the window may be covered in signage. There is a difference between blocking out a window with a covering that doesn't have any messaging or images. There are no specific ordinances that prevents someone from blocking out their windows. These are considered signs when images or messaging are included on those coverings.

Ms. Rosati stated the original concept of this is you don't want excess signage. You don't want a window blocked for public safety. However, this is a peculiar situation because it is blocked anyway. You would block it in some form, but you don't want to stare at the

insulation. The public safety issue is really non-existent here as you can't see through the glass due to the insulation.

Assistant City Manager Benson commented there are other circumstances of specific business where covering the windows, whether it be drapes, or physically adhered blockings, such as a medical center with patients or an industrial company, where you don't want people to see what's happening inside the structure. Generally speaking it is an aesthetic piece, but it is also intended to really limit window signage and flashing signs, which can be considered a nuisance.

Board Member Winters inquired if the applicant took the windows out because they already installed a wall on the inside, and blocked it up with the same brick, then what are we looking at? We are looking at a signage issue rather than a window blockage, correct? Mr. Lewan answered yes, but he did not know if anyone had done the calculation of how much building signage they would be permitted, and if they are at their maximum. Window signage is different than building signage; if you have windows you get extra. The City allows you to cover 25% of the window in signage. That's above and beyond your building signage.

Mr. Dudvukaj commented when they applied for a permit, the City never stated you are not allowed to cover more than 25%. He did not receive anything in writing or an email. He indicated he drives around the building; the same building and they are covered 100%. Mr. Dudvukaj stated he asked the building inspector and he said they were never approved. They have been there for two or three years and are still like that. The whole building is covered.

Chair Caplan commented the guidelines have been explained and the Board is here to follow them. The Board has taken into consideration some situations. As far as window coverages, the Board is pretty generous. The City is giving you extra signage because it is different than what you would be allowed.

Board Member Thorsell commented there is a unique opportunity in terms of the black background of Jimmy John's is black. How can you determine the difference between just blacked out windows and then the Jimmy John's actual emblem? If the Jimmy John's symbol was shrunk down to 25% of the window, everything else was blacked out, is it a blacked-out window?

Mr. Lewan stated we need to calculate the circle of Jimmy John's. Board Member Thorsell stated this could be some compromise to be considered, and that would not require a variance. Chair Caplan stated the applicant could make it work with 25%, and they wouldn't have to come before the Board.

MOTION and second by Board members Thorsell and Hutchens to deny **VARIANCE REQUEST #PZBA 24-002: 49461 GRAND RIVER, WIXOM, MI. 48393:** to allow for 100% window sign coverage for a portion of the site, rather than the maximum permitted 25% coverage pursuant to Section 18.16.050. a.1. because of a failure to demonstrate the required standards for a variance

VOTE: MOTION CARRIED

3. **PUBLIC HEARING FOR VARIANCE REQUEST #PZBA 24-003: 29571957 EMERALD LANE, WIXOM, MI 48393:** The applicant is seeking three dimensional variances to allow 1) a porch and/or deck with a rear yard setback of 3.8 feet rather than the minimum setback for a porch and/or deck of 20 feet pursuant to Section 18.13.030.C1 2) to allow a porch and/or deck with a side yard setback of 5 feet rather than the minimum setback for a porch and/or deck of 6 feet pursuant to Section 18.13.030.B 3) to allow a deck/patio that covers 30.5 percent or 745 square feet of the required rear yard rather than the maximum 15 percent or 365.7 square foot allowed coverage for a deck/patio pursuant to Section 18.13.030.C2. The property is zoned R-2 One-Family residential/PUD, and the parcel number is 17-30-204-038.

Discussion:

The applicant made improvements to their property at 1957 Emerald Lane without benefit of either zoning or building permits. The applicant now requests after the fact approval of these improvements through variance requests.

The subject improvement is a 745 square foot porch that encroaches into the required porch and/or deck setback of 20 feet for a rear yard and 6 feet for a side yard. The applicant is also seeking a variance to allow for deck/patio lot coverage of 30.5% rather than the maximum coverage of 15%.

Upon review of the retroactive permit application, staff identified a private utility easement running along the rear (western) lot line of the property in which the patio encroached upon. Staff directed the applicant to obtain a hold harmless agreement from the owners of the private easement prior to applying for a variance. The City wants to ensure there is a mechanism in place to address the liability associated with the encroachment and establish a legal remedy should the private utility ever need to be accessed.

The applicant has provided a letter from the residents of 1945 Emerald Lane (neighbor to the south) stating they take no issue with the deck/patio.

Considerations for the proposed variance and Findings of Fact are included in a memo from Carlisle Wortman Associates dated April 24, 2024.

Recommendation from Carlisle Wortman Associates: As conditions a, b, and e have not been met, they recommend denial of the subject variance request. Specifically, the applicant has not shown Extraordinary Circumstances, Practical Difficult/Substantial Justice, and the variance is self-created.

Ms. Elona Marino, 1957 Emerald Lane, Wixom, MI. 48393, applicant, introduced herself to the Board.

In November, 2023, Ms. Marino stated they decided to build their paver patio in the backyard. They have been there for three years in their new house. Ms. Marino designed the paver patio in the back yard. She stated their backyard is very unique: to the north, it has the wetlands; there is a lot which was too small to build another house, so it is someone's side yard. They decided to build the paver patio and made it a little bit too big than what was allowed, which they are now totally aware, it was a big mistake not to ask at first. They did ask permission from the HOA, which they did approve all of the drawings. She stated she was trying to put a little bit of coverage to the wetland. They have kids and play a lot in the backyard, and she must collect their basketballs and soccer balls. Ms. Marino indicated she did file for a permit and ran into this problem, which has been very, very stressful. It has been a stressful process because she did not think she would have this kind of problem.

Chair Caplan read a letter into the record from Susan and Chong Soo (John) Kim regarding Orlando and Elona Marino's patio at 1957 Emerald Lane, Wixom. They wrote to state that they have no issue with the patio that the Marino's built next door; in fact, they find it very beautiful. Copy of the letter is in the packet.

Encroachment Agreement and Release and Hold Harmless dated March 27, 2024 and signed by Orlando Gomez-Marino and Elona Marino, Erin Schlotta, president, Stonegate Village Condominium Associations, and MJC Stonegate Village LOA, Authorized Representative is also in the packet.

Chair Caplan asked who built the deck. Ms. Marino stated it was family members and people in their neighborhood. They could not build anything until now because it was recently cleared. The association sent a letter to the applicants stating they had to do something with the backyard. Ms. Marino stated she thought she followed the process.

Chair Caplan commented they hear a lot about the associations and the problem is, it doesn't address the City's concern.

Mr. Lewan commented although there are similar circumstances to the previous two applicants tonight being that this is constructed and found out after the fact, and not necessarily contained in the applicant's application material, there is a little difference here. On the aerial photograph, there could be a case made that this is a unique circumstance in that the rear of the lot abuts to a cul de sac; there will never be a home

there. North of the lot, as was stated, is a wetland. There will likely never be a home there either. Mr. Lewan stated in his review and opinion at this point, this is a little different than the first two. There are actually a few things you can put your finger on, although unique and peculiar in this case, which were not as unique or peculiar in the previous cases.

Chair Caplan agreed and stated when the Board looks at lakefront property, we must look at it completely differently. He, personally agreed with the planner when he looked at it on Google Earth; it looked a little more unique where there is your own little place. Chair Caplan stated Mr. Lewan addressed the concern of the encroachment into the easement very well with the release and hold harmless.

Chairman Caplan opened the public hearing.

Ms. Erin Schlotta, 1859 Ruby Street, stated she is the president of the homeowner's association, Stonegate Village Homeowner's Association. She indicated the structure in question was constructed without HOA Board approval. The association was not aware of this until it was already constructed. When the structure was brought to the association board's attention, a notice was sent to the homeowners that a modification request was not submitted and was required. The homeowners provided information on the structure and the Association provided a conditional letter of approval. The approval from the association was conditional upon the patio being within all municipal requirements including but not limited to building codes, zoning laws, not being over easements and obtaining all necessary permits. Ms. Schlotta indicated she had a copy of that letter if the Board would like it. Ms. Schlotta stated in March, the association was informed that the structure was installed 2.14 feet onto the easement. The association board voted to execute the agreement and acknowledge the encroachment to protect the association. The association board is comprised entirely of homeowners and rely on the requesting homeowners and contractors to do their due diligence to insure they are compliant with the zoning laws, permits and easements. If the association board was aware that none of these conditions for approvals were being met by the homeowners of 1957 Emerald Lane, the conditional approval letter would not have been provided. It is the intention of the current board of directors to not allow encroachments such as this in the future. Ms. Schlotta stated there is a neighbor directly to the south. The neighbor directly to the west, if you look on Google Maps, it does look larger than it is. It is a small yard and they do intend to install a fence. The applicant's lot is not an odd shape, and it is not any smaller than any other lot in the neighborhood. There is at least a dozen lots in the neighborhood which also abut to the protected wetlands. The approval specifically states it is the square part that was approved with the condition. Ms. Schlotta stated she was not there to speak about how good the patio looks or how other people feel about it. She is there to simply state the facts of the case.

Chairman Caplan closed the public hearing.

Board Member Thorsell comment it is not just the setbacks, it is also the square footage; it is twice what is allowed. It is not the easement or the setbacks, it is the size of the whole patio; it is a significant variance.

Mr. Lewan commented that if you look on your drawing, there is a little extension and it would appear that if that extension was removed, it is very likely that the rest of the deck would be fully compliant with the City's standards. Mr. Lewan stated, yes, he thought all the variances would go away at that point if that is removed.

Ms. Rosati commented if that route suggested by Mr. Lewan, the Board would be denying the variances. You would go back and remove what is necessary and reapply for permits from the City.

Chair Caplan commented if the Board denies the variances the homeowner will have to go work it out and most likely take off the small piece of the paver patio, which they feel the applicant could get within the ordinance. Board Member Winters stated the little piece of patio that goes out, if that could be removed, then there is not at issue any longer; they do not need a variance. Board Member Thorsell indicated the square footage of that area would have to be recalculated.

MOTION and second by Board members Thorsell and Winters to deny **VARIANCE REQUEST #PZBA 24-003: 1957 EMERALD LANE, WIXOM, MI 48393:** seeking three dimensional variances to allow 1) a porch and/or deck with a rear yard setback of 3.8 feet rather than the minimum setback for a porch and/or deck of 20 feet pursuant to Section 18.13.030.C1 2) to allow a porch and/or deck with a side yard setback of 5 feet rather than the minimum setback for a porch and/or deck of 6 feet pursuant to Section 18.13.030.B 3) to allow a deck/patio that covers 30.5 percent or 745 square feet of the required rear yard rather than the maximum 15 percent or 365.7 square foot allowed coverage for a deck/patio pursuant to Section 18.13.030.C2. because the applicant has not demonstrated a [practical difficulty and there is a lack of unique circumstances that necessitate a variance from ordinance standards

VOTE: MOTION CARRIED

CALL TO THE PUBLIC:

No public comments.

STAFF COMMENTS:

Assistant City Manager Benson commented it was good to see everyone, it has been a while. There is a vacancy on the Board right now as well as two vacancies for alternate positions. If the Board knows of anyone who may be interested in joining the Zoning Board of Appeals, please let them know and their application will be submitted to the Mayor.

The employee and volunteer appreciation picnic is scheduled for Thursday, June 6. Assistant City Manager Benson hopes some or all the Board can make it to celebrate their service to the City.

COMMISSION COMMENTS:

Board Member Cousineau commented he is going to request that the Planning Commission appoint another representative to the ZBA to replace him. He has become extremely busy, and he is having difficulty making all the night meetings.

Board Member Cousineau also stated they are one short on the Planning Commission; they will have to appoint another representative. He indicated the Planning Commission may be down two, to be prepared.

ADJOURNMENT:

The meeting of the Zoning Board of Appeals was motioned and adjourned at 8:40 p.m.

Mona Freiburger
Recording Secretary