

**PRESENT:** Chair. Peter Nilsson, Mike Sharman, Bill Weber, Gwen Cole, Chris Rider, Jim Campbell - Town Attorney & Tammie Schwerzler - Recording Secretary

**EXCUSED:** Kevin Masterson - Code Enforcement Officer

- AGENDA:**
- Steven Barrett
    - 5774 Old Orchard Point
    - Area Variance
    - 12' x 25' deck/porch
  
  - Tim Sprague
    - 4594 East Lake Road
    - Area Variance
    - Second-story addition
  
  - John & Sharon Sparling
    - 3604 Shoreline Drive
    - Area Variance
    - 12' x 21' deck

Chair. P. Nilsson opened the meeting at 7:00 p.m. He asked the board members to review the April 15, 2013 meeting minutes before them. Hearing no comments, he asked for a motion to adopt.

M/2/C (G. Cole/B. Weber) to accept the April 15, 2013 Livonia Joint Zoning Board of Appeals meeting minutes as submitted.

Motion carried 5-0.

Recording Secretary read aloud the first Legal Notice:

RE: Application of **Steven Barrett** for a public hearing for an Area Variance for the construction of a 12' x 25' lakeside deck/porch which will violate section 150-70 A (2) of the Town of Livonia Zoning Code. No non-conforming building shall be expanded or enlarged. The property in question is located at 5774 Old Orchard Point, Livonia, New York and is zoned Neighborhood Residential (NR) District.

Chair P. Nilsson polled the board members for site visit:

Chair. P. Nilsson	-	yes
M. Sharman	-	yes
G. Cole	-	yes
B. Weber	-	yes
C. Rider	-	yes

Chair. Nilsson explained that all board members visited the site and have reviewed his application. He asked Mr. Barrett to explain his request.

Steven explained that he wishes to construct a deck with a roof overhead on the lakeside of his residence. The south side of the residence does not conform with setback requirements; however, it does conform to the neighborhood. Everyone has porches or decks except himself. Additionally, his residence is furthest from the lake. All neighbors are in favor of his request.

B. Weber asked what the setback is from the lake.  
Answer was "more than thirty feet."

Atty. J. Campbell stated that Director of Building & Zoning, Kevin Masterson indicated lot coverage is good.

B. Weber questioned whether or not the residence is owner occupied or a rental property. Steven replied owner occupied.

Chair. P. Nilsson then asked the Board to review the **Area Variance** legal criteria:

- (6) Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance?  
- no
- (2) Can the benefit sought by the applicant be achieved by some feasible method other than a variance?  
- no
- (3) Is the request substantial?  
- no
- (4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood district?  
- no
- (5) Is the alleged difficulty self created?  
- yes

This action has been determined to be a Type II action under SEQR and is exempt from Review under Part 617.5 (12) and (13) of the State Environmental Quality Review.

M/2/C (M. Sharman/G. Cole) to approve the Area Variance as requested.  
Motion carried 5-0.

Recording Secretary read aloud the second Legal Notice:

RE: Application of **Tim Sprague** for a public hearing for an Area Variance for the construction of a second-story addition which will violate section 150-70 A (2) of the Town of Livonia Zoning Code. No non-conforming building shall be expanded or enlarged. The property in question is located at 4594 East Lake Road, Livonia, New York and is zoned Neighborhood Residential (NR) District.

Chair P. Nilsson polled the board members for site visit:

Chair. P. Nilsson	-	yes
M. Sharman	-	yes
G. Cole	-	yes
B. Weber	-	yes
C. Rider	-	yes

Chris Wegener came forward on behalf of his client, **Tim Sprague**, stating that the Spragues are away on vacation. They are selling their property in Webster and plan to move out to the lake permanently. They need one more bedroom and a bathroom. Chris passed out plans to the board members, pointing out the 24' x 26' proposed addition of a master bedroom, master bathroom, a closet, and stairs. There are currently two bedrooms, one bathroom and a crawl space downstairs.

Chair. P. Nilsson asked the board for questions or comments.

C. Rider asked if Tim had discussed this with the neighbors.

Chris stated that the neighbor to the north stated his displeasure to the construction so Chris informed him he could attend the public hearing to voice his opinion; however, he was not present. Chris informed the board that this house is further away from the lake than neighboring homes.

B. Weber asked if there are currently two electric meters on the residence.

Answer was yes, there is another structure on the property in which they use as a rental. Tim is planning on reducing it to one meter.

B. Weber questioned whether or not the structure will be a rental or used personally.

Chris explained that the Spragues are moving out to Livonia full time and the second structure on the property is staying vacant unless their children want to stay there.

B. Weber asked if the smaller structure has a kitchen.

Answer was yes.

B. Weber asked Attorney Campbell if it would be proper to put a condition on this request that the owners commit to not using either of the structures for a rental.

Bill stated he is sensitive to areas on the lake. He thinks if they sell the property, anyone could rent out both units. He doesn't want to see that happen.

J. Campbell stated that the board could do that, but he didn't agree with Bill's theory. It is not related to this application. "I think you're looking at the lake by how you want to see this." He advised the board to be careful to make clear all opinions and choices. Jim explained that variances stay with the property, not with the applicant.

B. Weber stated that if they remove the kitchen in the second structure, it will just be for sleeping purposes. Bill asked the board members if they'd like to table a decision until Chris Wegener would be able to contact the property owners and ask if they'd be willing to do that. Chris W. told the board that they'd like to start the construction tomorrow if possible, so there won't be time for that. He suggested he call the property owner at this time, yet he asked what that had to do with the applicant's request at this time. "So you're trying to abolish renting the second structure out just because we're here requesting a variance for something that doesn't pertain to renting the property?"

Chair. P. Nilsson stated he is opposed to Bill W. Idea.

G. Cole said, "It sounds like we'd be making an exception on this application."

M. Sharman felt he was comfortable with allowing Chris to contact his client to ask if he'd be willing to accept a condition to never rent out either structure. Chris stepped outside at 7:29 pm to make the phone call to Mr. Sprague. Chris Wegener came back to the meeting at 7:35 pm. Chris told the board that although the property owner is willing to not rent the structures out, he is not willing to accept it as a condition dictated by this board, it has nothing to do with his variance request.

Chair. P. Nilsson asked Chris if he asked the applicant outright. Chris said, "Yes, but I am not willing, as his contractor to accept this either."

B. Weber asked Town Atty. Jim Campbell if the board was allowed to put a condition on this application to never allow the property owner, nor any in the future to rent out the structures. Campbell explained that to be a Use Variance. Future property owners would have to come back and ask for a use variance should they want to rent out the property and Realtors would have to know this information upon any sale of the property, which would be nearly impossible.

M. Sharman stated that they property owner has reassured this board that he will not rent out the structures, he is changing the electric meters from having two, to one.

Atty. Campbell, again stated that he is not comfortable with placing such a condition on this application, it is not the right mechanism.

M. Sharman agreed with Campbell stating that he'd like to deal with the application at hand.

Chair. P. Nilsson then asked the Board to review the **Area Variance** legal criteria:

- (6) Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance?  
- no
- (2) Can the benefit sought by the applicant be achieved by some feasible method other than a variance?  
- no
- (3) Is the request substantial?  
- no
- (4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood district?  
- no
- (5) Is the alleged difficulty self created?  
- yes

This action has been determined to be a Type II action under SEQR and is exempt from Review under Part 617.5 (12) and (13) of the State Environmental Quality Review.

M/2/C (G. Cole/Chair. P. Nilsson) to approve the Area Variance as requested.  
Motion carried 4-1. Bill Weber voted nay.

Recording Secretary read aloud the second Legal Notice:

RE: Application of **John & Sharon Sparling** for a public hearing for an Area Variance for the construction of a 12' x 21' deck which will violate Section 150-70 A (2) of the Town of Livonia Zoning Code. No non-conforming building shall be expanded or enlarged. The property in question is located at 3604 Shoreline Drive, Livonia, New York and is zoned Neighborhood Residential (NR) District.

Chair P. Nilsson polled the board members for site visit:

Chair. P. Nilsson	-	yes
M. Sharman	-	yes
G. Cole	-	yes
B. Weber	-	no, but he is familiar with the property
C. Rider	-	yes

Chair. P. Nilsson asked Mr. Sparling to come forward to explain his request to the board members.

Jack explained that he has demolished the deck and would like to construct a new one which will extend it only two (2) feet. Kevin Masterson gave him permission to demolish the old deck and explained that he had the ability to request an area variance from this board.

Chair. P. Nilsson then asked the Board to review the **Area Variance** legal criteria:

- (6) Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance?  
- no
- (2) Can the benefit sought by the applicant be achieved by some feasible method other than a variance?  
- no
- (3) Is the request substantial?  
- no
- (4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood district?  
- no
- (5) Is the alleged difficulty self created?  
- yes

This action has been determined to be a Type II action under SEQR and is exempt from Review under Part 617.5 (12) and (13) of the State Environmental Quality Review.

M/2/C (M. Sharman/B. Weber) to approve the Area Variance as requested.  
Motion carried 5-1.

M/2/C ( C. Rider/B. Weber) to adjourn the meeting at 8:00 p.m.  
Motion carried 5-0.

Respectfully submitted,

Tammie Schwerzler  
Recording Secretary