

**LIVONIA JOINT ZONING BOARD OF APPEALS**  
**Meeting Minutes - December 17, 2012**

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**PRESENT:** Chair. P. Nilsson, J. Case, C. Rider, M. Sharman, R. Ehmann, J. Campbell - Town Attorney, K. Masterson - Code Enforcement Officer & Tammie Schwerzler - Recording Secretary

- AGENDA:**
- Dwayne & Michelle Wall
    - 4463 East Lake Road
    - Area Variance
    - 16' x 20' addition to an existing single family residence
  
  - Other Business
    - Ron Munson correspondence
    - Jerry Gilbert correspondence

Chair. P. Nilsson opened the meeting at 7:00 p.m.

Chair. P. Nilsson asked the board to review the December 3, 2012 meeting minutes. M/2/C (M. Sharman/C. Rider) to adopt the December 3, 2012 Livonia Joint Zoning Board of Appeals meeting minutes as presented.  
Motion carried 5-0.

Recording Secretary read aloud the first Legal Notice:

**RE:** Application of **Dwayne & Michelle Wall** for a public hearing requesting an Area Variance for the construction of a 16' x 20' addition to an existing single family residence which will violate a side setback requirement according to Section 150-31 G (2) according to the Town of Livonia Zoning Codes. The property in question is located at 4463 East Lake Road, Livonia, New York and is zoned Neighborhood Residential (NR) Zoning District.

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

Chair. P. Nilsson	-	yes
C. Rider	-	yes
J. Case	-	yes
R. Ehmann	-	yes
M. Sharman	-	yes

Chair. Nilsson asked Mark Muller, representative of Dwayne & Michelle Wall, to come forward to discuss their request of an Area Variance.

Mark handed out architectural elevation drawings to the board members. He explained that this residence was once a small cottage. At that time the square footage and the small rooms on the lower level (livingroom & kitchen) were fine, but they are just not adequate now. Mr. & Mrs. Wall live in Batavia right now and their son is going off to college soon. They would like to move out to Livonia permanently at that time. They need more living space.

The existing residence is only 3' off the south property line at this time. They would like to expand the preexisting/nonconforming lot by constructing the addition no closer than 3' off the south property line.

Mr. Ash owns the property to the south. He had called the Building & Zoning Department and spoke with Kevin Masterson. He informed Kevin that he had no issues with this request. Mark stated that this is not going to effect the people to the north or south.

Muller explained this would be a one level addition on a slab. There is an existing patio outside the kitchen.

Chair. P. Nilsson asked Mr. Muller if they intended to expand the parking area.  
Answer was no.

Kevin Masterson told the board that there is a retaining wall about 8-9' high dividing the parking area from the residence.

Chair. P. Nilsson opened up the public hearing portion of the meeting, however there were no comments, he then closed the public hearing portion of the meeting.

M. Sharman asked Mr. Muller if the Walls intended to get any closer than 3' to the property line.  
Answer was no.

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

- (1) 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 because the addition would not infringe any closer to the property line  
- yes because the new addition would allow the residence to extend further along the property line.

- (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

Chair. asked for questions or comments from the members. There were none.

M/2/C (J. Case/C. Rider) to grant the area variance as submitted.  
Motion carried 5-0.

Kevin Masterson referred to a packet handed out to the members regarding **Ron Munson** of 6273 Decker Road. Kevin explained that Ron will be attending the January 21, 2013 Livonia Joint Zoning Board meeting, as referred by the Livonia Joint Planning Board. The items in the packet are as follows:

- 1 A memo from Finger Lakes Timber Company explaining their intentions for their current property.
- 1 A memo from the Livonia Joint Planning Board to the Livonia Joint Zoning Board of Appeal, dated December 17, 2012.
- 1 Correspondence addressed to Mr. Munson from the Livonia Joint Planning Board, dated December 17, 2012
- 1 A public hearing notice that the Livonia Joint Zoning Board of Appeals will hold a public hearing on Monday, January 21, 2013 at 7:00 p.m.

Atty. J. Campbell stated for the record that he has represented the Munsons on occasions. This was raised at a recent Planning Board meeting as well. He has recused himself from participating.

M. Sharman asked Kevin if since Mr. Munson's first application, "did he purchase more property?"

Kevin said, "Yes, 5 acres, to make a total of 6.5 acres."

Currently he has a market where he ships logs to the Amish to be milled, then shipped back. The original Conditional Use Permit (CUP) said he could have a portable saw mill with a single blade. He stopped using the portable saw mill but now wants to put it in a building along with two additional machines and employ four more people

M. Sharman asked if Ron sells slab wood from the property now.  
Kevin said no, but if and when he starts milling it should be addressed. He does not want to do retail or have customers.

Kevin explained that he has not built the building he was previously granted site plan approval for. He has however, cleaned up the property, built a berm and once the berm is more settled, trees will go up. This operation been going on since 2003.

Kevin explained that neighbors of Mr. Munson have been at recent Planning Board meetings and the Planning Board allowed public comments even though it was not a public hearing.

J. Case asked if this board issues a CUP to applicant but he doesn't follow thru can we rescind that CUP?

Kevin said "Yes, but be specific on any conditions made. You have every right to impose conditions and time limits if you so choose.

Kevin reminded them that they're not granting a CUP, they are just answering whether or not the current proposal is different from the original intent.

M. Sharman asked if it would be easier if the board members just answered now.

P. Nilsson explained that there has to be a public hearing.

M. Sharman asked for previous minutes to be supplied to the board.

R. Ehmann asked if the Planning Board could put conditions on a CUP.  
Answer was yes, they can.

C. Rider believes the proposed operation will cut down on traffic.

Kevin stated that there will be a public hearing on January 21, 2013, the public hearing notice is in their packets.

M. Sharman asked if the neighbors are receptive to the proposed operation changes.

Kevin's reply was, "No, they don't want it there. Matt & Beth Graf have said they are most impacted by the proposal. They did buy the 55 acres behind, after the business was already in operations.

Kevin explained that this is an agricultural business. Ron recently appeared before the Planning Board because Kevin denied him a building permit until a site plan application was reviewed.

J. Case stated that he feels this is leaning toward an industrial business.

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Recording Secretary, Tammie Schwerzler, asked to be excused at 7:30 p.m.  
The board agreed.

M/2/C On a motion of Chair. Peter Nilsson, and seconded by member M. Sharman, the following resolution to enter into executive session at 7:45 p.m. with Town Atty. Jim Campbell and Kevin Masterson to discuss possible litigation.

Motion carried 5-0

Return to regular session

M/2/C On motion of M. Sharman, and seconded by C. Rider the following resolution to return to regular meeting at 8:08 p.m.

No action was taken in executive session.

Motion carried 5-0.

Chair. P. Nilsson announced that the board will discuss the Gilbert correspondence received this evening at the next scheduled meeting, January 21, 2013.

On advice from Town Atty. J. Campbell, the board members and the Building & Zoning Department are to have no dialog with Jerry Gilbert.

M/2/C (M. Sharman/R. Ehmann) to adjourn the meeting at 8:15 p.m.

Motion carried 5-0.

Respectfully Submitted,

Tammie Schwerzler  
Recording Secretary

Kevin P. Masterson  
Acting Recording Secretary

TS/KPM