

**CHARTER TOWNSHIP OF GARFIELD  
ZONING BOARD OF APPEALS MEETING**

Thursday, July 18, 2024 @ 6:00 p.m.  
Garfield Township Hall  
3848 Veterans Drive  
Traverse City, MI 49684

**A G E N D A**

**ORDER OF BUSINESS**

Call meeting to order  
Pledge of Allegiance  
Roll call of Board Members

1. Review and approval of the Agenda and declaration of a Conflict of Interest
2. Minutes – May 16, 2024
3. Public Hearings:
  - a. A request made by Grand Traverse Engineering on behalf of Maury Dennis for a variance from the wetland buffer requirement in Section 534.B of the Garfield Township Zoning Ordinance. The applicant is requesting relief from the twenty-five (25) foot wetland buffer requirement. The property is zoned I-L Limited Industrial and is located on the north side of Miller Creek Drive and with a property number of 05-022-012-50.
4. Unfinished Business
5. Other Business
6. Items for next agenda
7. Public Comment
8. Adjournment

The Garfield Township Board will provide necessary reasonable auxiliary aids and services, such as signers for hearing impaired and audio tapes of printed materials being considered at the meeting to individuals with disabilities upon the provision of reasonable advance notice to the Garfield Township Board. Individuals with Disabilities requiring auxiliary aids or services should contact the Garfield Township Board by writing or calling Lanie McManus, Clerk, Ph: (231) 941-1620.

**CHARTER TOWNSHIP OF GARFIELD  
ZONING BOARD OF APPEALS  
MEETING MINUTES  
May 16, 2024**

**Call to Order:** Chair Smith called the meeting to order at 6:00pm.

**Pledge of Allegiance:** Recited by everyone in attendance.

**Roll Call of Board Members:**

Members Present: Robert Fudge, Kent Rozycki, Lynne Fricke, Scott Swan and Rick Smith

Also in Attendance: Zoning Administrator Mike Green

**1. Review and Approval of the Agenda – Conflicts of Interest (6:01)**

*Swan moved and Rozycki seconded to approve the agenda as presented.*

*Yeas: Swan, Rozycki, Fudge, Fricke, Smith*

*Nays: None*

**2. Review and Approval of Meeting Minutes – April 18, 2024 (6:02)**

*Fudge moved and Swan seconded to approve the minutes of April 18, 2024 as presented.*

*Yeas: Fudge, Swan, Fricke, Rozycki, Smith*

*Nays: None*

**3. Public Hearings (6:02)**

- a. A request made by Kathy Boyd, a resident at 1669 Lake Drive, to appeal the issuance of a Land Use Permit for grading and drainage activities on an adjacent parcel. The subject property is located at 1661 Lake Drive with the property number of 05-295-035-00.**

Applicant Kathy Boyd addressed the ZBA and said that her appeal was to address two items. She asked the ZBA to enforce Zoning Ordinance Section 511.A which pertains to a 10 foot sideyard setback, in this case, for a small section of the neighbor's driveway. Boyd is also requesting that the ZBA overturn the neighbor's stormwater permit since the drainage is faulty and water from the neighbor's property flows onto her property. She read her letter dated April 16, 2024 and presented a PowerPoint presentation to make her argument. Board members asked questions regarding the presentation from Boyd. Zoning Administrator Green stated that the goal is compliance with the ordinance and that grading without a permit and drainage on the site are the main issues. One must meet the stormwater ordinance in order to get a drainage permit. Green also addressed the two letters from Gourdie Fraser - one dated January 26, 2024 and revised on February 8, 2024 and the other dated April 26, 2024. Gourdie Fraser stated in the April 26<sup>th</sup> letter that Mr. Waggoner needed to

get stormwater plans to Gourdie Fraser to fix the issue so that it meets their recommendations. Gourdie Fraser also stated that they never certified the stormwater plans that Waggoner put in place. Green stated that residential certification of stormwater plans are not an option in the township ordinance.

Chair Smith opened the public hearing at 7:01pm.

Bill Waggoner, owner of 1661 Lake Drive, spoke and said that he purchased the property in the winter of 2022 and in the spring of 2023, noticed that there were erosion issues on the shore. He added that EGLE told him that he was allowed to arrest the erosion. He then made plans for a retaining wall and applied for a soil erosion permit. Waggoner stated that he also wished to repair the non-conforming driveway and the person constructing the driveway suggested a trench drain in front of the garage. Waggoner questioned why he needed a land use permit to fix the driveway.

Smith closed the public hearing at 7:26pm.

Board members told Waggoner to obtain all permits needed from necessary authorities to complete his work correctly and legally and to remedy all violations. Engineers from Crain or Gourdie Fraser could tell him what needs to be done with the drainage system to make it work properly. Board members also asked Waggoner to remove the small area of concrete which encroaches into the 10-foot sideyard setback.

*Rozycki moved and Fricke seconded to REVERSE the decision of the Zoning Administrator to issue Land Use Permit as requested based on noncompliance with the Stormwater Ordinance as alleged by the Appellant and the based on a determination that the reconstruction of the driveway does not qualify as a legal nonconforming use based on the standards of Section 812 – Nonconforming Sites.*

*Yeas: Rozycki, Fricke, Fudge, Swan, Smith*

*Nays: None*

- 4. Other Business (7:46)**  
None
- 5. Items for Next Agenda (7:46)**  
Green gave an overview of next month's ZBA case.
- 6. Public Comment (7:46)**  
None
- 7. Adjournment:** *Fudge moved to adjourn the meeting at 7:46pm.*

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Lynn Fricke, Secretary



# Charter Township of Garfield

## Grand Traverse County

3848 VETERANS DRIVE  
TRAVERSE CITY, MICHIGAN 49684  
PH: (231) 941-1620 • FAX: (231) 941-1588

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### ZONING BOARD OF APPEALS STAFF REPORT

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Meeting Date: July 18, 2024  
Case #: 2024-03: Variance Request  
Owner: Stuff-It Storage (Maury Dennis)  
Applicant: Jeff Cockfield/Grand Traverse Engineering.  
Property ID #: 05-022-012-50  
Property Location: Miller Creek Drive  
Zoning District: I-L Limited Industrial

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#### Request

The applicant is seeking a variance from Article 5, Section 534.B of the Garfield Township Zoning Ordinance, which states no structure or parking lot shall be constructed within twenty-five (25) feet of a regulated or unregulated wetland. According to the application, the current and proposed access drive off Miller Creek Drive provides sole access to the property. Section 454.A of the Zoning Ordinance states that “the Zoning Board of Appeals may authorize a non-use variance relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of this ordinance, or to any other non-use related standard of this ordinance, that comply with the requirements of this section.”

#### Background

The request, as presented above, is identical to a prior request for the same property back in 2018. Although the request for a variance was granted, the approval became null and void due to lack of action within one (1) year of it being granted per Section 454.F of the Zoning Ordinance. The Decision and Order and minutes for the 2018 Variance Request are included as attachments to this report. While the request appears to be unchanged from the 2018 request, work was completed on the Cass Road Drain project that may have impacted water levels in the area. The Cass Road Drain project included the construction and improvement of drains, removal of a culvert, and the replacement/enlargement of culverts under Cass Road and the railroad to prevent flooding in the area. The applicant has stated that the map provided with the application shows that the wetland boundary is much the same as it was in 2018. Nonetheless, our Zoning Ordinance requires that a site plan showing wetlands be certified by the State of Michigan through EGLE.

**Location Map (the subject parcel outlined in light blue)**



**Staff Comments**

Approval of the 2018 wetland setback variance was based on receipt of a wetland boundary map that was certified by Michigan Department of Environmental Quality (now called the Michigan Department of Environment, Great Lakes, and Energy). I have advised the applicant that a certified wetland map is required prior to ZBA review as was the case back in 2018.

**Proposed Findings of Fact**

To qualify for a variance, the applicant must meet all the Practical Difficulty standards and General Criteria as described below. For each standard, staff comments are shown as **highlighted**. I am recommending that no action be taken until the wetland map is certified as noted in this report.

**E. Approval Criteria**

**(1) Practical Difficulty**

To qualify for a dimensional variance, the applicant shall be required to show “practical difficulty” by demonstrating compliance with all the following criteria (*The ZBA made findings in favor of each standard listed below in 2018*):

- (a) Special conditions or circumstances exist that are peculiar to the land, buildings, or other structures for which the variance is sought, do not apply generally to lands, buildings, or other structures in the same district, and could not reasonably be addressed through the formation of general regulation for such conditions. Special circumstances or conditions to be considered for variances shall include, but not be limited to, the circumstances as described in § 454.E.(3);
1. **Possible finding in favor of the variance request:** *The existence of wetlands that wrap around the property and choke off access could be considered a "special condition or circumstance" and would not establish precedence for similar variance requests.*
  2. **Possible finding against the variance request:** *This condition is not met as parcels that include wetlands are a common occurrence throughout the Township. As a result, approving the request as presented would set precedent for other parcel owners seeking similar relief.*
- (b) The special conditions and circumstances peculiar to the land, buildings or other structures did not result from a self-created condition or action taken by the applicant or an owner of the lands;
1. **Possible finding in favor of the variance request:** *The request for a variance is a result of natural features that appear to have existed prior to the request.*
  2. **Possible finding against the variance request:** *The site appears to have been filled by a prior owner of the property. By this, it could be argued that the condition requiring mitigation through a variance was self-created, even though the current owner did not create it.*
- (c) The special conditions and circumstances are such that strict application of the provisions of this ordinance would deprive the applicant of any reasonable use of the land, building, or structure authorized by this Zoning Ordinance;
1. **Possible finding in favor of the variance request:** *The property could not be developed as proposed without the variance, due to the fact that the required access road could not be built at least 25 feet from a wetland unless the applicant was able to obtain permits to fill in part of the wetland.*
  2. **Possible finding in opposition of the variance request:** *The applicant has failed to demonstrate that all other lawful alternatives, including wetland fill permits or alternative site locations, have been considered.*
- (d) Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance;
1. **Possible finding in favor of the variance request:** *The applicant has demonstrated that the property could not be developed as proposed without the variance, due to the fact that the required access road providing sole access to the site could not be built at least 25 feet from a wetland.*
  2. **Possible finding in opposition of the variance request:** *The applicant has failed to demonstrate that all other lawful alternatives, including wetland fill permits or alternative design elements, have been considered.*
- (e) For the purpose of this section, a practical difficulty shall not exist because an applicant would incur additional costs to achieve full compliance or could receive additional income with less than full compliance with the ordinance. *This hasn't been brought up by the applicants as a factor in their decision.*

## (2) General Criteria

Where the applicant is able to demonstrate "practical difficulty" by satisfying all of the criteria of § 454.E.(1), a dimensional variance may be granted if it meets the following general criteria:

- (a) The requested variance shall relate only to property that is under the control of the applicant; *The applicant owns the property, so this would be met.]*
- (b) No nonconforming neighboring lands, buildings, or other structures, legal or illegal, in the same district, and no permitted buildings, or other structures in adjacent districts, shall be considered as grounds for the issuance of a variance; *No reference was made by the applicant to any previously approved variances.*
- (c) The requested variance shall be in harmony with the general purpose and intent of this ordinance and shall not be detrimental to the public health, safety and welfare;

1. **Possible finding in favor of the variance request:** A wetland setback variance for an access drive would not be detrimental to the public health, safety and welfare provided that measures are put into place that would prevent direct runoff of storm water into the wetlands;
  2. **Possible finding in opposition to the request:** The applicant has failed to demonstrate that the proposed variance and elimination of the 25 ft. wetland buffer would not be detrimental to the public health, safety and welfare. Measures could be proposed to mitigate this and incorporated into a condition of approval.
- (d) The requested variance shall not alter the essential character of the area or cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located;
1. **Possible finding in favor of the variance request:** The proposed location of an industrial building would be of similar character with the two other businesses located at the end of Miller Creek Drive.
  2. **Possible finding in opposition to the variance request:** The proposed access drive within the required wetland setbacks could have an adverse effect upon properties in the immediate vicinity due to the direct runoff of untreated or unfiltered storm water runoff into the adjacent wetlands, which drain into Miller Creek and eventually Lake Michigan (Measures could be proposed to mitigate this and incorporated into a condition of approval).
- (e) The requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure, and there is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance.
1. **Possible finding in favor of the variance request:** There does not appear to be an alternative location for an access drive that would eliminate the need for the requested variance. The MDEQ recommends against filling wetlands as a means to meet the 25 ft. wetland setback.
  2. **Possible finding in opposition of the request:** There may be alternative design options available for construction of the access drive that would eliminate the need for a variance, including a clear span bridge over existing wetland areas in front of the parcel as stated by the Watershed Center.

### (3) Special Conditions or Circumstances

Special conditions or circumstances to be considered for the purposes of § 454.E.(1) shall include, but not be limited to, the circumstances as described below:

#### (a) Physical Conditions

The proposed project site contains physical conditions such as narrowness, shallowness, shape, or topography of the property involved that do not generally apply to other property or uses in the same zoning district.

#### (b) Significant Vegetation or Natural Features

The proposed project site contains significant vegetation or other natural features identified as Stream Environment/Wetland by the Garfield Township Master Plan.

#### (c) Substandard Lot(s)

The proposed project involves the utilization of an existing legal nonconforming lot(s).

#### (d) Historic Resources

The proposed project site contains historical significance.

#### (e) Neighborhood Character

The proposed project promotes the established historic or traditional development pattern of a blockface, including setbacks, building height, and other dimensional requirements.

### Alternative Motions

1. Motion to: **GRANT** the request for a variance from Section 534.B of the Garfield Township Zoning Ordinance to allow a required access drive to be constructed within the twenty-five (25)

feet wetland setback area based on the Practical Difficulty standards and General Criteria for granting such request being met.

2. Motion to: **GRANT, WITH CONDITIONS** the request for variance from Section 534.B of the Garfield Township Zoning Ordinance to allow a required access drive to be constructed within the twenty-five (25) feet wetland setback area based on the Practical Difficulty standards and General Criteria for granting such request being met. *[the ZBA may place other conditions as deemed necessary to mitigate any potential negative impacts that may be generated by the granting of the variance request.]*

**Possible condition #1:** *Approval is contingent on storm water features to prevent the direct discharge of storm water from the proposed access drive into the surrounding wetlands.*

**Possible condition #2:** *Approval is contingent on EGLE review of the current culvert located under the current access drive and any recommended or required improvements or replacements.*

3. Motion to: **DENY** the request for variance from Section 534.B of the Garfield Township Zoning Ordinance to allow required access drive to be constructed within the twenty-five (25) feet wetland setback area based on the Practical Difficulty standards and General Criteria for granting such request NOT being met.

Attachments:

1. ZBA Application and Site Plan
2. ZBA-2018-02.b Decision and Order
3. October 17, 2018 ZBA Minutes





Case # 2024-03

# Charter Township of Garfield

Grand Traverse County

3848 VETERANS DRIVE  
TRAVERSE CITY, MICHIGAN 49684  
PHONE: 231-941-1620 \* FAX: 231-941-1588

## ZONING BOARD OF APPEALS APPLICATION

Applications and fees shall be submitted 30 days prior to the regular scheduled ZBA hearing date.

1. Owner Name:

Maurie Dennis

Address:

2620 Cass Road

City, State, Zip Code:

Traverse City, MI 49684

Owner Phone Number:

Applicant Name:

Jeff Cockfield, Grand Traverse Engineering, LLC

Address:

PO Box 227

City, State, Zip Code:

Traverse City, MI 49685

Applicant Phone Number:

231-218-4986

2. Property Information:

a. Property Address: 2582 Miller Creek Drive, Traverse City, MI 49686

b. Property Location: 2582 Miller Creek Drive, Traverse City, MI 49686 (West of Cass)

c. Lot # \_\_\_\_\_ Subdivision Name: \_\_\_\_\_

d. Parcel ID# 28-05- 022 - 012 - 50

e. Current Zoning: I-L, LIMITED INDUSTRIAL

f. Current Use: Vacant

3. Purpose For Request:

Variance  Appeal \_\_\_\_\_ Interpretation \_\_\_\_\_ Review \_\_\_\_\_

Other  Please explain request / list section(s) related to request: \_\_\_\_\_

Reaffirm the variance requested previously granted at the BZA meeting on October 17, 2018.

The granted variance was for relief from the 25-foot wetland buffer setback at the entrance drive for the subject property. Proposed future development TBD.

**Affidavit:**

The undersigned affirms that he/she or they is/are the owner, or authorized agent of the owner, and that the answers and statements herein contained and the information submitted are in all respects true and correct. In addition, the undersigned represents that he/she or they is/are authorized and does hereby grant a right of entry to Township officials for the purpose of inspecting the premises and uses thereon for the sole purpose of gathering information regarding the request.

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Date

**6/17/2024**

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

Any party aggrieved by the decision of the Zoning Board of Appeals may appeal the decision to circuit court. An Appeal of the decision shall be filed in accordance with PA 110 of 2006, as amended.

## SECTION 454 VARIANCES

### A. Applicability – Dimensional Variances

The Zoning Board of Appeals may authorize a non-use variance relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of this ordinance, or to any other non-use related standard of this ordinance, that comply with the requirements of this section.

### A. Applicability – Dimensional Variances

The Zoning Board of Appeals shall not grant a use variance or take any action that would have the effect of granting a variance from the permitted use of land.

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### E. Approval Criteria

#### (1) Practical Difficulty

To qualify for a dimensional variance, the applicant shall be required to show “practical difficulty” by demonstrating compliance with all of the following criteria:

- (a) Special conditions or circumstances exist that are peculiar to the land, buildings, or other structures for which the variance is sought, do not apply generally to lands, buildings, or other structures in the same district, and could not reasonably be addressed through the formation of general regulation for such conditions. Special circumstances or conditions to be considered for variances shall include, but not be limited to, the circumstances as described in § 454.E.(3);
- (b) The special conditions and circumstances peculiar to the land, buildings or other structures did not result from a self-created condition or action taken by the applicant or an owner of the lands;
- (c) The special conditions and circumstances are such that strict application of the provisions of this ordinance would deprive the applicant of any reasonable use of the land, building, or structure authorized by this Zoning Ordinance;
- (d) Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance; and
- (e) For the purpose of this section, a practical difficulty shall not exist because an applicant would incur additional costs to achieve full compliance or could receive additional income with less than full compliance with the ordinance.

## **(2) General Criteria**

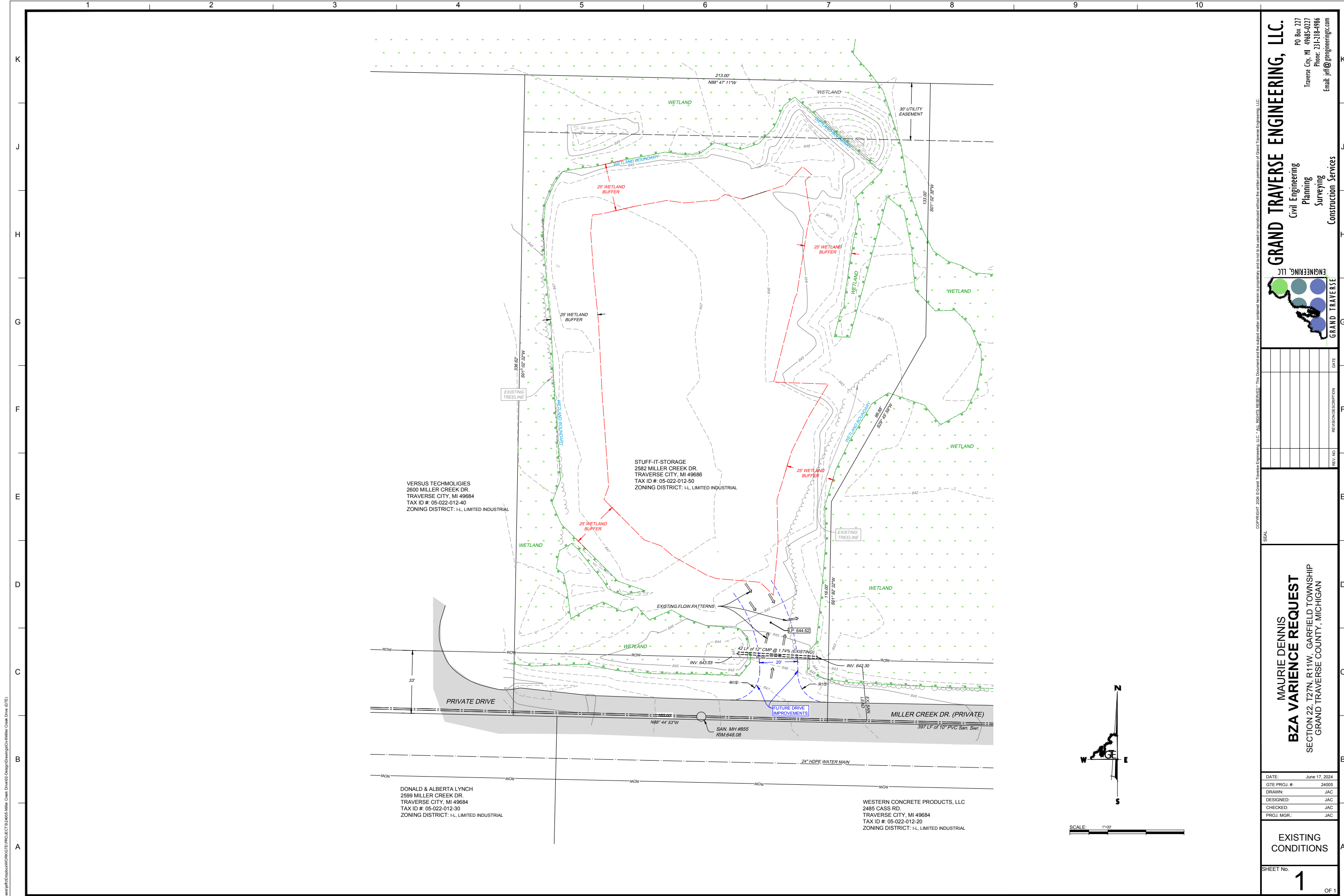
Where the applicant is able to demonstrate “practical difficulty” by satisfying all of the criteria of § 454.E.(1), a dimensional variance may be granted if it meets the following general criteria:

- (a) The requested variance shall relate only to property that is under the control of the applicant;
- (b) No nonconforming neighboring lands, buildings, or other structures, legal or illegal, in the same district, and no permitted buildings, or other structures in adjacent districts, shall be considered as grounds for the issuance of a variance;
- (c) The requested variance shall be in harmony with the general purpose and intent of this ordinance and shall not be detrimental to the public health, safety and welfare;
- (d) The requested variance shall not alter the essential character of the area or cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located; and
- (e) The requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure, and there is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance.

## **(3) Special Conditions or Circumstances**

Special conditions or circumstances to be considered for the purposes of § 454.E.(1) shall include, but not be limited to, the circumstances as described below:

- (a) **Physical Conditions:** The proposed project site contains physical conditions such as narrowness, shallowness, shape, or topography of the property involved that do not generally apply to other property or uses in the same zoning district.
- (b) **Significant Vegetation or Natural Features:** The proposed project site contains significant vegetation or other natural features identified as Stream Environment/Wetland by the Garfield Township Master Plan.
- (c) **Substandard Lot(s):** The proposed project involves the utilization of an existing legal nonconforming lot(s).
- (d) **Historic Resources:** The proposed project site contains historical significance.
- (e) **Neighborhood Character:** The proposed project promotes the established historic or traditional development pattern of a blockface, including setbacks, building height, and other dimensional requirements.

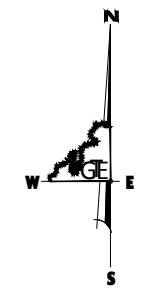


VERSUS TECHNOLOGIES  
 2600 MILLER CREEK DR.  
 TRAVERSE CITY, MI 49684  
 TAX ID #: 05-022-012-40  
 ZONING DISTRICT: I-L, LIMITED INDUSTRIAL

STUFF-IT-STORAGE  
 2582 MILLER CREEK DR.  
 TRAVERSE CITY, MI 49686  
 TAX ID #: 05-022-012-50  
 ZONING DISTRICT: I-L, LIMITED INDUSTRIAL

DONALD & ALBERTA LYNCH  
 2599 MILLER CREEK DR.  
 TRAVERSE CITY, MI 49684  
 TAX ID #: 05-022-012-30  
 ZONING DISTRICT: I-L, LIMITED INDUSTRIAL

WESTERN CONCRETE PRODUCTS, LLC  
 2485 CASS RD.  
 TRAVERSE CITY, MI 49684  
 TAX ID #: 05-022-012-20  
 ZONING DISTRICT: I-L, LIMITED INDUSTRIAL



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REV. NO.	REVISION DESCRIPTION	DATE

**MAURIE DENNIS**  
**BZA VARIANCE REQUEST**  
 SECTION 22, T27N, R11W, GARFIELD TOWNSHIP  
 GRAND TRAVERSE COUNTY, MICHIGAN

DATE:	June 17, 2024
GTE PROJ #:	24005
DRAWN:	JAC
DESIGNED:	JAC
CHECKED:	JAC
PROJ. MGR.:	JAC

EXISTING CONDITIONS

SHEET No. **1**  
 OF-1

**GRAND TRAVERSE ENGINEERING, LLC.**  
 Civil Engineering  
 Planning  
 Surveying  
 Construction Services

PO Box 227  
 Traverse City, MI 49685-0227  
 Phone: 231-218-4986  
 Email: jeff@grandtraverseeng.com

**GARFIELD TOWNSHIP  
ZONING BOARD OF APPEALS  
DECISION AND ORDER**

Meeting Date:	October 17, 2018
<b>Case #: 2018-02.b:</b>	Variance Request
Owner:	Dan Jonkoff/Jonkoff-Reynolds
Applicant:	Dan Jonkoff/Jonkoff-Reynolds
Agent:	Jeff Cockfield/Grand Traverse Engineering.
Property ID #:	05-022-012-50
Property Location:	Miller Creek Drive
Zoning District:	I-L Limited Industrial

**PROPERTY DESCRIPTION**

PT SW1/4 SEC 22 T27N R11W COM CTR SEC 22 TH N 89DEG 49'W 342.99' TO POB TH S 133' TH S 28DEG 43'W 99.88' TH S 116' TH N 89DEG 49'W 165' TH N 336.62' TH S 89DEG 49'E 213' TO POB

**APPLICANT REQUEST**

The applicant is seeking a variance from Article 5, Section 534.B of the Garfield Township Zoning Ordinance, which states no structure or parking lot shall be constructed within twenty-five (25) feet of a regulated or unregulated wetland. According to the application, the current and proposed access drive off of Miller Creek Drive provides sole access to the property. Section 454.A of the Zoning Ordinance states that “the Zoning Board of Appeals may authorize a non-use variance relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of this ordinance, or to any other non-use related standard of this ordinance, that comply with the requirements of this section.”

The variance request described above is the second of two requests being made by the applicant. The prior request was for an interpretation regarding the twenty-five (25) feet wetland buffer as established in Article 5, Section 534.B as described above, which was denied.

**PROPERTY BACKGROUND**

The subject parcel is owned by Stuff-it Storage and has been offered for sale to Dan Jonkoff. In addition, Mr. Jonkoff appears to be working with the Grand Traverse County Drain Commissioner on a plan to use an additional parcel to the north, also owned by Stuff-it Storage, as a storm water basin for an upcoming Cass Road Storm Drain project; much of the northern parcel appears to contain wetlands and also features a small stream that flows southeasterly across the front of the parcel. Based on conversations I’ve had with Steve Largent, Grand Traverse County Drain Commissioner, it is my understanding that part of the plan includes removing the culvert and severing the gravel road connection to the back of the northerly parcel to increase storm water flow and help resolve long-standing flooding of properties along Cass Road. Steve Largent, Drain Commissioner plans to attend the meeting to provide an update on the project.

### **COMMENTS RECEIVED PRIOR TO THE PUBLIC HEARING**

The following agency correspondence was received and placed in file:

1. Robyn Schmidt – MDEQ (email correspondence between 5/14/2018 and 9/6/2018): MDEQ recommends a water equalization culvert to allow water to flow more freely under the proposed access drive, which she finds more favorable an option than filling wetlands to meet the 25 ft. setback.
2. MDEQ Wetland Determination – 8/22/2018: The applicant agreed to provide this map showing the extent of wetlands within the subject property prior to reapplying for the requested variance.
3. Watershed Center comments – 5/16/2018: Heather Smith, Grand Traverse Baykeeper, states their opposition to the wetland setback variance. She contends that a clear span bridge could be built to carry the access drive over the wetland area in lieu of wetland fill permits or a variance. The letter further states that any approval should be contingent on creation of a vegetative buffer with native, deep-rooted plants and trees in the target areas.
4. Erik Perdonik, Assistant Planner comments – 5/16/2018: Mr. Perdonik states his opposition to the variance request, citing the importance of the required buffer to protect wetlands from direct storm water runoff and other impacts.
5. Gourdie Fraser comments – 5/11/2018: Andy Pervis, staff engineer, recommends that the access drive be graded and surfaced in a manner that redirects storm water runoff northerly into the site parking area with raised curbing on one or both sides of the drive.

### **FINDINGS APPROVED BY THE ZBA**

#### **Approval Criteria (Section 454.E)**

A variance may only be granted if the Zoning Board of Appeals finds that each of the Practical Difficulty standards under Section 454.E(1) are met and that each of the General Criteria under Section 454.E(2) are met.

#### **(1) Practical Difficulty**

To qualify for a dimensional variance, the applicant shall be required to show “practical difficulty” by demonstrating compliance with all the following criteria:

- (a) Special conditions or circumstances exist that are peculiar to the land, buildings, or other structures for which the variance is sought, do not apply generally to lands, buildings, or other structures in the same district, and could not reasonably be addressed through the formation of general regulation for such conditions. Special circumstances or conditions to be considered for variances shall include, but not be limited to, the circumstances as described in § 454.E.(3);

*Finding made in favor by 4-1 vote: The existence of wetlands that wrap around the property and choke off access could be considered a “special condition or circumstance” and would not establish precedence for similar variance requests.*

- (b) The special conditions and circumstances peculiar to the land, buildings or other structures did not result from a self-created condition or action taken by the applicant or an owner of the lands;

*Finding made in favor by 5-0 vote: The request for a variance is a result of natural features that appear to have existed prior to the request.*

- (c) The special conditions and circumstances are such that strict application of the provisions of this ordinance would deprive the applicant of any reasonable use of the land, building, or structure authorized by this Zoning Ordinance;

**Finding made in favor by 5-0 vote:** *The property could not be developed as proposed without the variance, due to the fact that the required access road could not be built at least 25 feet from a wetland unless the applicant was able to obtain permits to fill in part of the wetland.*

- (d) Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance;

**Finding made in favor by 5-0 vote:** *The applicant has demonstrated that the property could not be developed as proposed without the variance, due to the fact that the required access road providing sole access to the site could not be built at least 25 feet from a wetland.*

- (e) For the purpose of this section, a practical difficulty shall not exist because an applicant would incur additional costs to achieve full compliance or could receive additional income with less than full compliance with the ordinance.

**Finding made in favor by 5-0 vote:** *This hasn't been brought up by the applicants as a factor in their decision.*

## (2) General Criteria

Where the applicant is able to demonstrate "practical difficulty" by satisfying all of the criteria of § 454.E.(1), a dimensional variance may be granted if it meets the following general criteria:

- (a) The requested variance shall relate only to property that is under the control of the applicant;

**Finding made in favor by 5-0 vote:** *The applicant owns the property.*

- (b) No nonconforming neighboring lands, buildings, or other structures, legal or illegal, in the same district, and no permitted buildings, or other structures in adjacent districts, shall be considered as grounds for the issuance of a variance;

**Finding made in favor by 5-0 vote:** *No reference was made by the applicant to any previously approved variances.*

- (c) The requested variance shall be in harmony with the general purpose and intent of this ordinance and shall not be detrimental to the public health, safety and welfare;

**Finding made in favor by 5-0 vote:** *A wetland setback variance for an access drive would not be detrimental to the public health, safety and welfare provided that measures are put into place that would prevent direct runoff of storm water into the wetlands;*

- (d) The requested variance shall not alter the essential character of the area or cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located;

**Finding made in favor by 5-0 vote:** *The proposed location of an industrial building would be of similar character with the two other businesses located at the end of Miller Creek Drive.*

- (e) The requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure, and there is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance.

**Finding made in favor by 5-0 vote:** *There does not appear to be an alternative location for an access drive that would eliminate the need for the requested variance. The MDEQ recommends against filling wetlands as a means to meet the 25 ft. wetland setback.*

## DECISION

Based on the findings above, upon motion, seconded and passed, the Zoning Board of Appeals finds: THAT the request for variance from Section 534.B of the Garfield Township Zoning Ordinance to allow an access drive to be constructed within the twenty-five (25) feet wetland setback area be approved based on the Approval Criteria in Section 454.E for granting such request being met with the



condition of confirmation from the MDEQ that the current culvert and access is suitable and that the driveway be curbed to prevent stormwater from further entering the wetland setback area.

**ORDER**

APPROVE the request made by Motion to: **GRANT, WITH CONDITIONS** the request for variance from Section 534.B of the Garfield Township Zoning Ordinance to allow a required access drive to be constructed within the twenty-five (25) feet wetland setback area based on the Practical Difficulty standards and General Criteria for granting such request being met with conditions of confirmation from the MDEQ that the current culvert and access is suitable and curbing be installed in the driveway to prevent stormwater from further entering the wetland setback area

Charter Township of Garfield  
Zoning Board of Appeals Meeting

Wednesday, October 17, 2018 @ 6:00pm  
Garfield Township Hall  
3848 Veterans Drive  
Traverse City, MI 49684

Chair Rick Smith called the meeting to order at 6:00pm.

Board Members Present: Steve Duell, Lynne Fricke, Kent Rozycki, Scott Swan, Rick Smith

Staff Present: Michael Green

1. **Review and approval of the agenda and declaration of a Conflict of Interest**  
*Rozycki moved and Duell seconded to approve the agenda as presented.*

*Yeas: Rozicki, Duell, Fricke, Swan, Smith*

*Nays: None*

2. **Minutes –May 16, 2017**  
*Duell moved and Rozycki seconded to approve the minutes of May 16, 2018 as presented.*

*Yeas: Duell, Rozycki, Fricke, Swan, Smith*

*Nays: None*

3. **Public Hearings**

- a. **Reynolds-Jonkoff**

A request has been made by Dan Jonkoff of Reynolds-Jonkoff for a variance from the wetland buffer requirement in Section 534.B of the Garfield Township Zoning Ordinance. The applicant is requesting relief from the wetland buffer requirements through a variance. The property is zoned I-L Limited Industrial and is located on the north side of Miller Creek Drive with a property number of 05-022-012-50. Jeff Cockfield with GT Engineering representing Reynolds-Jonkoff said that the request was tabled back in May and the DEQ had to become involved. There is a letter in packets stating that the DEQ has confirmed the wetland delineation. Cockfield showed board members a map of the proposed area and said that the small entrance way makes it

impossible to meet the 25' wetland buffer. The area where the proposed variance is located has an existing driveway with a culvert. The applicant would not make the culvert any larger and the DEQ is agreeable to the culvert that is already on site. Cockfield said that the applicant is simply looking to do as little paving as possible and curbing the area so that the wetlands are not impacted. Board members discussed whether the area had been filled in the past. Steve Largent, Grand Traverse County Drain Commissioner said that he went to the Wetland Mitigation Bank and there was no evidence that the property had been filled. Board members discussed the fill issue and Steve Largent talked about the property as it relates to the Cass Road drainage district and was of the opinion that the proposed variance would have a minimal effect on the wetlands. Chairman Smith opened the Public Hearing at 6:56pm.

Jeff Jocks of Sondee, Racine & Doren is representing the property owner to the west and shared concerns with water leaching onto his client's property.

Phil Putman owns the property just to the south and is very comfortable with the proposed driveway.

Smith closed the Public Hearing at 6:58pm.

Board members reviewed the Practical Difficulty standards:

- (a) Special conditions or circumstances exist that are peculiar to the land, buildings, or other structures for which the variance is sought, do not apply generally to lands, buildings or other structures in the same district, and could reasonably be addressed through the formation of general regulation of such conditions. Special circumstances or conditions to be considered for variances shall include, but not be limited to, the circumstances as described in Section 454.E.(3). Board members voted 4-1 in favor of the proposal because the existence of wetlands that wrap around the property and choke off access could be considered a "special condition or circumstance" and would not establish precedence for similar variance requests.
- (b) The special conditions and circumstances peculiar to the land, buildings or other structures did not result from a self-created condition or action taken by the applicant or an owner of the lands. Board members voted 5-0 in favor of this finding because the request for a variance is a result of natural features that appear to have existed prior to the request.
- (c) The special conditions and circumstances are such that strict application of the provisions of this ordinance would deprive the applicant of any reasonable use of the land, building, or

structure authorized by this zoning ordinance. Board members found in favor 5-0 of this finding of fact because the property could not be developed as proposed without the variance, due to the fact that the required access road could not be built at least 25 feet from a wetland unless the applicant was able to obtain permits to fill in part of the wetland.

- (d) Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance. Board members voted in favor of this finding 5-0 because the applicant has demonstrated that the property could not be developed as proposed without the variance, due to the fact that the required access road providing sole access to the site could not be built at least 25 feet from a wetland.
- (e) A practical difficulty shall not exist because an applicant would incur additional costs to achieve full compliance or could receive additional income with less than full compliance with the ordinance. Board members voted in favor of this finding 5-0.

Board members then reviewed the General Criteria for the proposed variance.

- (a) The requested variance shall relate only to property that is under the control of the applicant. Board members voted 5-0 that the standard has been met because the applicant owns the property.
- (b) No non-conforming neighboring lands, buildings, or other structures, legal or illegal, in the same district, and no permitted buildings, or other structures in adjacent districts, shall be considered as grounds for the issuance of a variance. Board members voted 5-0 in favor of this finding.
- (c) The requested variance shall be in harmony with the general purpose and intent of this ordinance and shall not be detrimental to the public health, safety and welfare. Board members voted 5-0 in favor of this finding because a wetland setback variance for an access drive would not be detrimental to the public health safety and welfare provided that measures are put into place that would prevent direct runoff of storm water into the wetlands.
- (d) The requested variance shall not alter the essential character of the area or cause a substantial adverse effect upon properties in the immediate vicinity or in the district in which the property of the applicant is located. Board members voted in favor of this finding 5-0 because the proposed location of an industrial building would be of similar character with the two other businesses located at the end of Miller Creek Drive.
- (e) The requested variance is a minimum variance that will make possible the reasonable use of the land, building, structure, and

there is no reasonable alternative location on the parcel for the proposed improvements for which a variance is sought where such alternative location would eliminate the need for the requested variance or reduce the extent of the condition(s) necessitating the variance. Board members found this finding in favor of the variance request on a 5-0 vote because there does not appear to be an alternative location for an access drive that would eliminate the need for the requested variance. The MDEQ recommends against filling wetlands as a means to meet the 25 foot wetland setback.

*Swan moved and Fricke seconded to grant the request for a variance from Section 534B of the Garfield Township Zoning Ordinance to allow a required access drive to be constructed within the twenty-five (25) feet wetland setback area based on the Practical Difficulty standards and General Criteria for granting such request being met with the condition of confirmation from the DEQ that the current culvert and access is suitable; and that the driveway be curbed to keep stormwater on the property until it is out of the stormwater setbacks as determined by Township Engineer Jennifer Hodges.*

*Yeas: Swan, Fricke, Duell, Rozycki, Smith*

*Nays: None*

**7. Other Business**

None

**8. Items for next agenda**

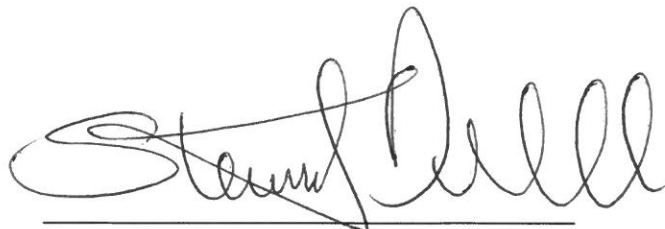
Nothing at this point

**9. Public Comment**

None

**10. Adjournment**

*Rozycki moved and Swan seconded to adjourn the meeting at 7:25pm.*

A handwritten signature in black ink, appearing to read "Steve Duell", written over a horizontal line.

Steve Duell, Secretary