

DEXTER TOWNSHIP ZONING BOARD OF APPEALS

FEBRUARY 11, 2009

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IN RE: Appeal Nos. 08-ZBA-694  
                  09-ZBA-705  
                  09-ZBA-706  
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PROCEEDINGS HAD in the above-entitled  
matter before the Dexter Township Zoning Board of Appeals,  
Dexter Township Hall, 6880 Dexter-Pinckney Road, Dexter,  
Michigan commencing at or about 7:00 p.m. on February 11,  
2009.

ZONING BOARD OF APPEALS:

MR. STEVEN BURCH, Chairman  
MR. BILL GAJEWSKI, Vice Chairman  
MS. PAT KELLY, Secretary  
MS. MARY ADAMS, Member  
MS. MARY HERDA SPRAWKA, Member  
  
MR. PETER FLINTOFT, Township Attorney  
MR. PATRICK SLOAN, Director of Planning  
  and Zoning  
MS. DENETTE BOLYARD, Recording Secretary

ALSO PRESENT:

MR. and MRS. GODEK, Petitioners  
MR. TEICHER, Attorney for Godeks.  
MR. JAMES SHAY, Attorney for Crosses  
Members of the Public and Others

REPORTER: Laurel A. Jacoby, CSR-5059, RPR

Dexter, Michigan  
February 11, 2009  
7:00 p.m.

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CHAIRMAN BURCH: Good evening, Ladies and  
Gentlemen. I call to order the February 11th, 2009  
meeting of the Dexter Township Zoning Board of  
Appeals. Before we move into the meeting proper, I  
invite you to join me, stand with the Pledge of  
Allegiance --

(Whereby Pledge of Allegiance was recited.)

CHAIRMAN BURCH: -- thank you, Ladies and  
Gentlemen.

As we proceed this evening, our process  
will be the approval of the agenda, approval of our  
meeting minutes of our two prior meetings, public  
comment on nonagenda items, and I would like to  
caution members of the public if they choose to  
comment during this time it will be for items that  
will not be addressed on the agenda this evening.

Followed by our action items, beginning  
with No. 1, 08-ZBA-694, Paul and Nancy Godek,  
9669 Portage Lake Avenue; agenda item No. 2,  
09-ZBA-705, David and Sally Cross, 9122 McGregor  
Road; agenda item No. 3, 09-ZBA-706, Chris and Mary

1           Seitz, 7473 Noah's Landing, followed by agenda item  
2           No. 4, 09-ZBA-707 PAR d/b/a Verizon Wireless care of  
3           Telsite, Incorporated, 1001 North Territorial Road,  
4           followed by public comment, concerns of board  
5           members, zoning administrator, recording secretary  
6           and adjournment, the floor will entertain a motion  
7           to amend or approve the minutes as read.

8                    MS. KELLY: I'll motion to approve about  
9           the change of moving of the approval of the meeting  
10          minutes to the end in deference to the folks here  
11          tonight and the court reporter.

12                   MR. GAJEWSKI: Support that motion.

13                   CHAIRMAN BURCH: It has been moved and  
14          supported that we move agenda item No. 4, approval  
15          of meeting minutes, to the end or make it agenda  
16          item No. 8 immediately following the concerns of the  
17          board members, zoning administrator and recording  
18          secretary.

19                   All in favor of the amendments say aye.

20                   (All say aye.)

21                   CHAIRMAN BURCH: Any opposed no. Amendment  
22          carries. All in favor of approving the agenda as  
23          amended say aye.

24                   (All say aye.)

25                   CHAIRMAN BURCH: Any opposed no. Motion

1 carries. Is there anyone in the public this evening  
2 that would care to address The Board regarding any  
3 nonagenda item? Hearing none, we shall proceed with  
4 the first action item, agenda item 108-ZBA-694, Paul  
5 and Nancy Godek, 9669 Portage Lake Avenue.

6 Mr. Sloan, in your role as zoning/planning  
7 administrator, would you please apprise The Board of  
8 this request, sir.

9 MR. SLOAN: Yeah. This request first came  
10 to the Zoning Board of Appeals a number of months  
11 ago and, let's see, go right to my report. It looks  
12 like it first came up in the September meeting and  
13 it's a request to add on a garage to the front part  
14 of the house. Right now the lot has a single-family  
15 dwelling and the purpose is to allow construction of  
16 an attached two-car garage and accompanying second  
17 story addition on the east side of the existing home  
18 at 9669 Portage Lake Avenue.

19 The parcel currently has a single-family  
20 home and lower level walk-out on the lake side.  
21 Because it's an existing nonconforming structure it  
22 requires variances. Variances requested by the  
23 Applicant in terms of changes were the front yard  
24 setback from the road, side yard setbacks, and lot  
25 coverage, all three of which need to be extended in

1 addition to acknowledging some of their  
2 nonconformities.

3 Since that time we've gone back and forth  
4 with the Applicant obtaining an accurate lot area  
5 calculation on the survey. We got eventually to  
6 that point where we were able to calculate the lot's  
7 coverage as accurate as we can. And let's see if I  
8 can find the proposed lot coverage just so I have  
9 the right number. I don't have the number in front  
10 of me but it's in the file. It's in the record in  
11 terms of the increase in lot coverage.

12 I'll just update you up to last month's  
13 meeting. There was a new member on the Zoning Board  
14 of Appeals last month, January 6th, and it was made  
15 clear to the Applicant that there were three  
16 affirmative votes that were needed to approve any  
17 variance. The new member on the Zoning Board of  
18 Appeals had not had an opportunity to review the  
19 record and make a decision on the case that night,  
20 so five members was not necessary but three  
21 affirmative votes are and it was asked if the  
22 Applicant if they would like to postpone the  
23 decision on the application until the February  
24 meeting to allow the new member time to review the  
25 record and prepare to make a decision at the

1 February meeting, and in that case there would be  
2 most likely five members of The Board in attendance,  
3 which there are, and a better chance at getting  
4 three affirmative votes; in other words, having a  
5 full board to review the case and make a decision  
6 tonight.

7 So that's where we left off and that brings  
8 us to tonight. So with that, I'll take any  
9 questions.

10 CHAIRMAN BURCH: Thank you, Mr. Sloan. And  
11 for the record, it is at this point I would normally  
12 read a list of the persons noticed for this request  
13 but because this appeal has been heard several times  
14 before, at the discretion of The Chair I'm going to  
15 dispense with that activity this evening. Should  
16 anyone desire a list of the persons noticed, it  
17 shall be available in the Township offices.

18 Members of The Board, does anyone have any  
19 questions of Mr. Sloan and his presentation at this  
20 time? Mr. Godek, sir, do you care to address The  
21 Board before we proceed to a vote on this matter?

22 MR. GODEK: Ladies and Gentlemen,  
23 Mr. Chair, I would. Paul Godek and I'm here this  
24 evening with my wife Nancy and my counsel,  
25 Mr. Teicher, and if I recall your comment from last

1 month's meeting is if there was some new information  
2 you would be open to allowing me to present that to  
3 The Board. And in view of the fact that it became  
4 public on the Dexter Township Master Plan, if you  
5 would allow, I'd like to just show you how my plan  
6 compares to some of the proposed things in this  
7 plan, how it fits.

8 CHAIRMAN BURCH: You have that opportunity,  
9 sir.

10 MR. GODEK: So if you'd allow, I do have  
11 handouts.

12 CHAIRMAN BURCH: That would be fine, sir.

13 MR. GODEK: Thanks for this opportunity to  
14 present this. What I've done is printed out the  
15 Master Plan, but as you can see on this front  
16 page -- or the Advisory Master Plan. But if you'd  
17 allow, I've handwritten that the following pages are  
18 a bullet-point summary of the key elements of the  
19 Dexter Township master planning format as applied to  
20 my Godek application for variance which was first  
21 presented to the Dexter Township Board at the  
22 September 2nd, 2008 meeting on the agenda.

23 And it's not intended to omit any of the  
24 full 20-page document but I felt I wanted to address  
25 issues as it applies to what I feel is on my agenda

1 item in a sense of expediency. So if you'll allow  
2 it that way, that's how I will proceed.

3 CHAIRMAN BURCH: That's perfect, sir.

4 MR. GODEK: Thank you. The reason I wasn't  
5 able to have this to The Board, prior of course, as  
6 you can see, it was basically a Saturday,  
7 January 24th meeting and it was really after that  
8 that this document became available. And the 27th  
9 was a cut-off date for the formal submission of  
10 plans, so I do appreciate your understanding of the  
11 situation.

12 And if you would -- then on the next page  
13 I've gone to what is addressing the Lakes  
14 Residential Area facts, and I won't read the printed  
15 format other than where I've got my handwritten  
16 notes and how it applies to I feel my agenda item;  
17 in other words, some of the facts about Lakes  
18 Residential Area is what the Planning Commission and  
19 of course the ZBA and the Dexter Township citizens,  
20 because this was a survey also included of the  
21 Dexter Township citizens. So what's been done here,  
22 of course, is a Master Plan that takes into account  
23 the Z Board observations as well as citizen survey  
24 input. So it's quite comprehensive, obviously, and  
25 ongoing.

1           Assuring the maintenance of safe and  
2 helpful conditions. You know, of course, having  
3 included that in my Applicant package, you know, how  
4 the -- it improves it. Protecting against water  
5 pollution; part of the Applicant package, of course,  
6 is the rain garden which has the rain containment of  
7 the runoff which my variance application complies  
8 with and exceeds. Reducing hazards of persons and  
9 damage to property as a result of the flood; that  
10 would be the same as containing water runoff.

11           And, of course, controlling the development  
12 so as to preserve economic and natural environmental  
13 value of the water resources. The Applicant package  
14 contains the elements of best use of resident  
15 homestead by improving existing structure and  
16 environment. So, you know, the overview, how it  
17 matches up to what is proposed for Lake Residential  
18 Area.

19           The next page has more facts and it talks  
20 about minimum lot sizes in LR, lake residential  
21 zoning, is one acre. And I just want to reference  
22 that our lot per the Section 1202 for lots of record  
23 after 3-27-1973 is where that applies and, of  
24 course, our lot was platted in 1902, so it's prior  
25 to that 1202 ordinance. And, of course, most lake

1 areas were subdivided into very small parcels in the  
2 early 1900s for seasonal cottages, and that's -- I'm  
3 sort of a poster child for that size lot. That's  
4 what I have.

5 And, of course, over the past several  
6 decades much of the housing has been converted from  
7 seasonal cottage to year around use. What the  
8 survey and I feel what the Planning Commission is  
9 acknowledging is that there's a change of community  
10 use of the Lake Residential District, and a large  
11 percentage of Lake Residential District property  
12 owners want to improve the neighborhood quality of  
13 housing. And, of course, I feel very strongly that  
14 that is what my proposal does.

15 The next page talks about benefits of Lakes  
16 Residential Areas. My only comment is everything on  
17 this page, of course, is all benefit to the Township  
18 and its citizens and, you know, we don't have to go  
19 through the line items because, of course, you're  
20 well aware of what's in there. But, you know, we  
21 all agree that it is a benefit for both the  
22 government and the citizens.

23 Now, where the planning advisory gets into  
24 is identifying some of the problems converting  
25 seasonal cottages to full-time homes. And what they

1 talk about is transportation. More vehicle trips  
2 leads to accelerated deterioration of roads. And if  
3 you look at my letter of 2-08-09 document with my  
4 aging in place I identified the fact that my  
5 residence is within walking distance of a small  
6 commercial area that includes all the things that  
7 you somewhat need on a daily basis. It has a  
8 convenience store, hardware store, it has a hobby  
9 shop, there's a car repair shop, etcetera.

10 So where we are and with the aging in place  
11 concept, we've taken those ideas and those concepts  
12 and matched them up, and this just points out how it  
13 mimics or how it overlays those kind of quality of  
14 life issues. Limited access resulting in longer  
15 emergency response times. And if you recall, both  
16 in September 2nd and also in January 25th I have  
17 documents to the ZBA addressing the fact that as a  
18 resident I've identified the fact that having a  
19 ability to be a first response with one's own  
20 vehicle is possibly overlooked by people that have  
21 walked in one's shoes.

22 And because in August we actually  
23 experienced a medical emergency with my wife it  
24 became very apparent to me how important it can be.  
25 Within those documents, what I discussed was the

1 situation in wintertime. And believe me, this  
2 winter I've had a chance to have many events timing  
3 it. It's basically 11 minutes get a vehicle in  
4 these winter icy conditions road ready, defrost to  
5 thawed, and the most important thing is with the  
6 subzero temperatures that vehicle must start.

7 The thing I make note of is on our lake  
8 areas often times what happens is we are the victim  
9 of natural disasters - windstorms, tornados, other  
10 things. And typically when these things happen  
11 we're often left without power or communication.  
12 And should it be that type of natural disaster,  
13 emergency, fire, medical or what it may be, what  
14 we're saying is we citizens at our homestead have  
15 identified that as a concern, a safety concern for  
16 us, and we're not the alone on that.

17 But I'm addressing our specific issue.  
18 We've identified as a safety concern for us and  
19 we're willing to take the steps to improve that  
20 safety and what we need, of course, is the Township  
21 to recognize and understand the reasons for it.

22 I just have time and again this winter  
23 realized the fact in talking to people that are  
24 emergency responders, one of the things they often  
25 say is that, you know, if you are able to --

1           whatever, if a person needs aid or if you need to  
2           have help in any way, obviously it's better to be  
3           able to move your vehicle and go toward an emergency  
4           responder as opposed to not being able to  
5           communicate.

6                         Further in here I believe it identifies  
7           that even, and if not I will address it but I do  
8           want to get back to that as we move through this.  
9           And regarding the more intense use of land that is  
10          coming through all developed areas, when it talks  
11          about higher lot coverage, impervious surface and  
12          use of fertilizer and pesticides, in my plan the  
13          rain garden addresses all those issues.

14                        And actually the increasing quality of  
15          storm water runoff and surface water runoff to the  
16          lakes on my 7-20-2008 dated application, my rain  
17          garden proposal was identified as exceeding any  
18          Dexter Township guideline for rainfall event per ZBA  
19          vice chair Mr. Gajewski. When he reviewed the plan,  
20          he noted my rain garden plan on the application did  
21          exceed the guidelines; in other words, it was far  
22          better than those guidelines.

23                        So and the other stuff really doesn't apply  
24          to my application so we can move on to the next  
25          page. Now, the next page talks about problems with

1 converting seasonal cottages to full-time homes and  
2 it talks about property rights and enjoyment. And  
3 one of the subsections is the use of the lake deeded  
4 access, boat docking and mooring, and I just make a  
5 reference that myself, as a member of the Portage  
6 Base Whitewood Association, as a board member we  
7 were able to bring private consultants, private  
8 money to assist with the government of Dexter  
9 Township to successfully enforce in the Washtenaw  
10 County Circuit Court the Portage Alley access  
11 lawsuit.

12 And I bring this up not because of any  
13 attention for our organization nor myself I want, I  
14 bring it up to show you a very good example of when  
15 government and citizens join forces and work  
16 together how there can be an outcome. There's no  
17 doubt in my mind and I think our supervisor  
18 Ms. Kelly would agree that alone I don't think we as  
19 private citizens nor alone as a Township we would  
20 have had this outcome. I truly don't. The gift and  
21 the benefit of this is we're working together to  
22 solve problems, and to me that's the essence of  
23 government. There's always solutions if people are  
24 willing to pursue them. And what the benefit of  
25 this is, it's the gift of -- this case has been

1 challenged in the appeals court. The appeals court  
2 upheld the ruling.

3 And what that legacy gives all of us  
4 citizens here in Dexter, in the Township, is very  
5 good case law because these things are going to  
6 occur again and again throughout any lake community.  
7 And it won't be just Dexter, it goes on throughout  
8 the state of Michigan and across the country. But  
9 what we've been able to do is get in some very good  
10 case law that upholds Riparian rights and rights of  
11 the citizens for all concerned. So I just point  
12 that out as a way that government and citizens can  
13 work together on issues.

14 Now, the next page has problems with  
15 converting seasonal cottages to full-time homes, and  
16 what it's identifying really is lots that are the  
17 size of the Portage resort community that my lot is  
18 in. And it talks about a small or nonexistent  
19 building envelope. Without variance, a 50-foot  
20 setback from the road and the water side is needed  
21 and on a relatively deep lot of 120 feet the  
22 allowable building envelope is only 20 feet.

23 Now for reference, my lot length is 132 and  
24 145. It's not a square, it's on an angle. So it is  
25 slightly longer than the 120 example here but as you

1 can see it really -- what it really is addressing is  
2 lake residential lots of my size. And, of course,  
3 variance is needed. And I'm just reiterating the  
4 fact that, of course, the house was in place and  
5 platted for 1902 and there's no self-created issue  
6 here on my property to that point.

7 Now, following this next page has an offer  
8 or has identified -- the Master Plan Public Advisory  
9 format has identified a possible -- and, you know, I  
10 make no hesitation about identifying what this is  
11 and, of course, I understand that these are possible  
12 solutions. And what it's talking about here for a  
13 possible solution is to create a larger building  
14 envelope that would decrease roadside setback  
15 distance to 25 feet per my application. And you  
16 have, of course, the dimensions and you have that  
17 plot.

18 My proposed addition plan has a minimum of  
19 37.5 feet road setback, so it's well above what is  
20 considered a normal minimum variance approval of 25  
21 feet, because 37 and a half would be the minimum.  
22 Because of the angle of my lot it goes from there,  
23 it increases. And, of course, on a relatively deep  
24 lot of 120 feet the allowable building envelope  
25 would now be 45 feet deep. My lot is slightly

1 larger so it would apply according to that scale.

2 And prioritize waterfront setbacks ahead of  
3 roadside setbacks. It talks about lakefront buffers  
4 being maintained. Yes, I have no changes proposed.  
5 Panoramic water view front views as preserved. Yes,  
6 I have no changes proposed. Owners are encouraged  
7 to use the entire building envelope before asking  
8 for a variance. Yes, refer to the application  
9 package, and by that I mean the application package  
10 is the minimum required and yet it's making maximum  
11 use of an existing structure which once again is  
12 pretty sound or pretty widely accepted sound  
13 fundamental zoning principles or building principles  
14 to use what you have first if it makes sense.

15 The variance requested to the ZBA would  
16 decline under this possible solution and, you know,  
17 once again, I think what we're acknowledging is  
18 community concerns and survey input; that is, saying  
19 the way the community uses these lake residential  
20 areas is changing and they do have -- they do want  
21 to address ways to make it -- improve conditions for  
22 everyone.

23 Still allow enough space for off-street  
24 parking via either an attached garage or in the  
25 driveway. My addition proposed increases and

1 improves the parking space setback. And if you  
2 recall, the reason for that is that the cars -- our  
3 vehicles would now be within a garage up against the  
4 house which actually takes the vehicles further away  
5 from the road. So, in essence, what we're doing is  
6 we're actually improving safety by moving the  
7 vehicles further away from the road through the  
8 proposal on the addition.

9 Moving to the next page, what I've done --  
10 and, excuse me, it's a little bit busy the way I've  
11 put it together but I did want to get it on one  
12 page -- I've taken the prior page that's the one  
13 possible solution for converting seasonal cottages,  
14 and if you'll notice that's up on the top. And then  
15 if you'll see where I've got these marks, I've put  
16 my footprint site plan on the bottom to give a  
17 comparison to how it matches up to the proposed  
18 solution that could work. And I just want to  
19 highlight how that actually matches up.

20 Creating a larger building envelope would  
21 be possible on my site plan. And if you'll see here  
22 on Part A of the example from the Township, which  
23 says 25-foot minimum road setback, if you'll look  
24 down to the A on my site plan you'll see it's 37.5  
25 feet. So that actually exceeds the possible

1 solution guideline. And then, of course, the  
2 120-foot deep lot, I actually have 145 and 132 so  
3 I'm just recognizing the fact that my lot actually  
4 is a little bit larger than the example.

5 But, in essence, what I was trying to do is  
6 say here if you had an overlay and put what I  
7 proposed against what a possible solution is come up  
8 by the Master Planning format for small lake  
9 residential lots you would see that we've come up  
10 with basically the same possible solution, the same  
11 concept.

12 So what it tells us here in the next page  
13 is the Dexter Township Master Plan policy format  
14 planning framework works from a goal to an objective  
15 to an implementation, basically a vision to an  
16 execution. And my handwritten notes on the Godek  
17 reference say: The Godek addition plan begins with  
18 a vision, outlines the objectives, and implements  
19 strategies that match the key elements of the -- and  
20 I should have had proposed Dexter Township Master  
21 Planning format, and I apologize for the omission  
22 there. It wasn't intentional. I caught it right  
23 now as I'm reading it.

24 But I just want to emphasize that we've put  
25 and made -- that was why my reference was about the

1 Portage Lake Alley working with government and  
2 private. We've taken the best team we know of, both  
3 for counsel and for architects, and our best vision  
4 and our best ways to make this proposed addition  
5 work for Township guidelines and for the objectives  
6 that we need for housing, and as it comes out we  
7 match.

8 I mean, on a proposed plan, our plans, even  
9 though we were working in separate rooms not knowing  
10 what each one was doing, the public survey, the  
11 Planning Commission in their proposed resolution for  
12 small lots of my size is very, very -- the key  
13 elements are all similar to what I've got in front  
14 of you on my proposed addition plan.

15 The other page, this next page just  
16 basically talks about the Dexter Township goal  
17 objective and the strategy example, and that's  
18 pretty much on record there. We don't need to read  
19 that. But if you would allow, there was two other  
20 little items here that I'd like to address here.  
21 And I wanted to mention -- well, excuse me on that  
22 one, but what I would just like to put in front of  
23 you for thought here after what I've noted is, you  
24 know, Thomas Jefferson is noted as an architect of  
25 our state township government infrastructure. It

1 was Mr. Jefferson that recognized the new  
2 territories and, of course, later they named a  
3 statehood, required an infrastructure of local  
4 government for the citizens and a means to be  
5 accountable to the far-off national capital in  
6 Washington.

7 And there's this quote from Mr. Jefferson  
8 that he gave to James Madison in 1789 when they were  
9 discussing the elements of government, and this is  
10 what Mr. Jefferson observed, and I quote: "Persons  
11 and property make the sum of the objects of  
12 government." I'll read that again. "Persons and  
13 property make the sum of the objects of government."  
14 Very simple but very clear. And honestly, reading  
15 that and thinking through, it humbles me to  
16 recognize that Mr. Jefferson's legacy of over 200  
17 years ago is taking place in this room tonight.  
18 Because for sure we people attending these meetings  
19 attend these meetings to steward our property with  
20 our government. And that's the process that's going  
21 on here, the elements of persons and property.

22 We're experiencing a democratic process  
23 that can lead us to an equitable solution. The  
24 government and private citizens working at both  
25 sides of the table, and we've been doing that, with

1           our best practices and integrity. We have  
2           environmental awareness involved, we have community  
3           input and private consultants. All of this to me  
4           contains a defining moment for Dexter Township and  
5           its citizens.

6                        I feel that our agenda, the Godek agenda  
7           proposed project, has very planned framework that is  
8           offered as a possible solution by the Township  
9           Planning Commission, as I fully pointed out some of  
10          those elements as key elements tonight on my  
11          presentation. The agenda items are based on best  
12          practices offered by the Planning Commission and  
13          documented at some type of a solution or such type  
14          of a solution is encouraged by the Dexter Township  
15          community citizens, the survey verifies.

16                       It's now at that moment awaiting to move  
17          from a vision -- it's now the moment awaiting for us  
18          to move from a vision, to embrace the objective, and  
19          to grant the relief needed to enact implementation.  
20          And if I may have a moment here to quote  
21          Ben Franklin who says: "Words may show a man's wit  
22          but action his need."

23                       I would like to propose or offer to the  
24          honorable Dexter Township Board of Appeals that I,  
25          Paul Godek, and my wife Nancy, as homestead owners

1 of the agenda item before you request that the  
2 Dexter Township Master Plan advisory words of wit,  
3 that is the advice offered in that plan, be applied  
4 to a plan of action to grant relief to the variances  
5 needed for the approval of the project before you  
6 tonight. This project certainly can serve as a  
7 practical case study for the solutions to lake  
8 residential small lot building envelopes, and I  
9 thank you for your patience and allowing me to  
10 present this and God Bless America.

11 CHAIRMAN BURCH: Thank you, Mr. Godek. I  
12 assume that you are willing to take questions at  
13 this point, sir?

14 MR. GODEK: Of course.

15 CHAIRMAN BURCH: Thank you. Members of The  
16 Board? Miss Kelly?

17 MS. KELLY: I don't have any questions. I  
18 would like to offer a motion.

19 CHAIRMAN BURCH: Prior to your offering a  
20 motion, Miss Kelly, I'd like to poll the other  
21 members of The Board. Miss Adams, do you have any  
22 questions for Mr. Godek at this time?

23 MS. ADAMS: No.

24 CHAIRMAN BURCH: Thank you Miss Adams.  
25 Miss Herda Sprawka, do you have any questions?

1 MS. HERDA SPRAWKA: No, I do not.

2 CHAIRMAN BURCH: Mr. Gajewski?

3 MR. GAJEWSKI: No, but I'd like to make a  
4 comment, I guess. Normally, I would not allow a lot  
5 area coverage in excess of 25 percent. There's a  
6 much bigger issue here other than Mr. Godek's  
7 variance request. He's planning for the aging that  
8 we neglected in our Zoning Ordinance and Master  
9 Plan.

10 Although the ZBA cannot consider  
11 Mr. Godek's problem and need to house his aging  
12 mother, it's still our problem as a community and  
13 should be addressed in our new Master Plan; however,  
14 Section 19.09 of our Zoning Ordinance does deal with  
15 hardship cases. It states: Nonconforming buildings  
16 or structures may be structurally changed, altered  
17 or enlarged with the approval of the Zoning Board of  
18 Appeals in case of hardship. And caring for aging  
19 parents is definitely a hardship case. Therefore,  
20 Section 19.09 definitely applies but does not seem  
21 to go far enough. But the intent is there.

22 Also in the past we had talked about  
23 considering a lot area coverage that could exceed 25  
24 percent but only for very small lots, and 5,000  
25 square feet was the magic number. Mr. Godek's lot

1 is in that 5,000 square foot range. So allowing one  
2 to exceed the 25 percent lot area coverage because  
3 of hardship to take care of aging parents is not the  
4 same as allowing one to exceed 25 percent lot area  
5 coverage to build a McMansion, so there is no  
6 precedence. So that's my comment.

7 CHAIRMAN BURCH: Thank you, Mr. Gajewski.  
8 And, Miss Kelly, if I may beg your patience for one  
9 more moment I would like to open the floor to the  
10 general public. Does anyone in the audience have  
11 any comments or questions regarding Mr. Godek's  
12 request that The Board you feel should consider?

13 Hearing none, Miss Kelly, you have the  
14 floor, ma'am.

15 MS. KELLY: Okay. First of all, I thank  
16 you for your presentation, Paul. It was excellent.  
17 I missed that one meeting. I read part of it. It  
18 was one I was sorry to miss but I had to.

19 I would like to evaluate all the comments  
20 from that meeting in view of what you've shown us  
21 tonight and consider that fully. I know that  
22 Mr. Gajewski did attend that meeting. I don't  
23 believe any of the rest of the ZBA members did  
24 including myself, so the motion I'd like to offer is  
25 to defer action on this application to allow the ZBA

1 time to review the materials distributed by you  
2 tonight at this meeting and also to allow the ZBA  
3 members the opportunity to review all the public  
4 comments made and recorded at the 1-24-2009 Planning  
5 Commission Citizen Public Advisory Meeting on Lakes  
6 Residential District.

7 I just -- I would like to get my head  
8 wrapped around all this. I mean, as you know, Paul,  
9 you sat up here before, that it's hard to make a  
10 decision on the spot like that, and I would like the  
11 opportunity to think about it a little more. So  
12 that's my motion.

13 CHAIRMAN BURCH: Thank you, Miss Kelly. Do  
14 we have support?

15 MR. GAJEWSKI: I'll support the motion for  
16 discussion.

17 CHAIRMAN BURCH: It has been moved and  
18 supported that we defer a decision on Mr. Godek's  
19 request this evening to allow the Zoning Board of  
20 Appeals to review the new information and also to  
21 review comments made during the previously addressed  
22 advisory meeting. Any comments?

23 MR. GAJEWSKI: I just wanted to see if The  
24 Board had any comments, if they felt comfortable.

25 MS. ADAMS: Well --

1 MS. KELLY: I guess you were there. I  
2 forgot you were the Planning Commission liaison.

3 MS. ADAMS: I was at the meeting and I just  
4 want to bring out there was one individual who  
5 resides on Grove Drive who I thought was very  
6 well-spoken and made several comments that I think  
7 directly relate to your request, Mr. Godek. And  
8 these are the comments of George Bachman (ph.), and  
9 I'm going to read the minutes.

10 Mr. Bachman lives on Grove Drive, 8779,  
11 stated that there are several houses that do not  
12 appear to meet the sideyard setback requirements.  
13 He was concerned about whether there was inspection  
14 of these setbacks, and then he went on to state that  
15 he believes we were over developing the area.  
16 Houses are being built too close to each other and  
17 this is a big concern with regard to fire  
18 protection, drainage runoff issues that are  
19 prevalent in the lakes area. And the drainage  
20 affects the roads, neighbors, water quality.

21 He was speaking a bit about the esthetics,  
22 the appearance of the neighborhood when homes are  
23 built too large for the lots that exist, and he was  
24 strongly in favor of regulating the sizes of lake  
25 homes. There was no other public comment at this

1 meeting that refuted his statements or felt that  
2 yes, let's have over development. And I just felt  
3 that he was expressing the general opinion of lakes  
4 residential residents.

5 And nobody stood up at that meeting and  
6 said let's set aside the lot coverage zoning  
7 requirement. So that's all I have to say.

8 CHAIRMAN BURCH: Thank you, Ms. Adams.

9 MS. HERDA SPRAWKA: My only comment is that  
10 what you've given us tonight is thought provoking;  
11 however, it is proposed public -- it is Proposed  
12 Master Plan, not something that's an ordinance, to  
13 my knowledge. I'm not sure we can make decisions as  
14 the ZBA based on a Proposed Master Plan guidelines  
15 but I would -- being new to the ZBA, I would need to  
16 search out some guidance from the rest of The Board,  
17 and I would be happy to defer any decision until  
18 after we've had a chance to go through this in a  
19 little more detail so that I feel on firm ground  
20 making a decision.

21 CHAIRMAN BURCH: Thank you, Ms. Herda  
22 Sprawka. Any other comment, members of The Board?

23 MR. SLOAN: Can I take a few minutes to --

24 CHAIRMAN BURCH: Mr. Sloan, of course, sir.

25 MR. SLOAN: This Power Point presentation

1 that's here, I wrote the presentation. I presented  
2 it at the meeting. It doesn't include all the  
3 slides or the original Power Point, but if I could  
4 take a few minutes to go through at least some of  
5 the context of what it was, I think this would frame  
6 it a little bit better based on what's been  
7 presented.

8 The Public Advisory Meeting, this was the  
9 second of three that we had. And the purpose of the  
10 Public Advisory Meetings was to allow the Planning  
11 Commission an opportunity to get comments from the  
12 public about certain areas of the Township. This  
13 meeting specifically dealt with the Lakes  
14 Residential Areas of Dexter Township and to hear any  
15 kind of comments they would have to eventually put  
16 into their Master Plan, which is the policy  
17 guidelines. So in terms of the policy and how  
18 things are changed in the ordinance, it's in the  
19 Planning Commission's -- the purview of the Planning  
20 Commission and the Township Board.

21 A Master Plan is a guide for development,  
22 land use and infrastructure issues that may project  
23 20 years or more into the future. The Master Plan  
24 is required by the Michigan Planning and Enabling  
25 Act and it must include certain things - maps,

1 charts and other descriptive and explanatory matter,  
2 future land use plan, the location and the character  
3 of infrastructure and a zoning plan that describes  
4 how the land use categories on the future land use  
5 map relate to the districts on the zoning map and  
6 ordinance and recommendations for implementing the  
7 proposals. I'll skip through some of the other  
8 slides where it goes through lakes residential  
9 facts. There's really not much discussion I have  
10 based on that tonight.

11 And with the conversion of seasonal  
12 cottages to full-time single-family homes, I put  
13 those slides in there because people in the Lakes  
14 Residential that were in attendance at that meeting,  
15 my thought was that people that are in attendance  
16 have either gone through the process of converting  
17 to single-family full-time use or have neighbors who  
18 have done so. So one of the larger issues that me  
19 as the zoning administrator is seeing in the lakes  
20 district is this conversion, and I thought that  
21 would probably be the focus of the conversation. So  
22 I just gave a few facts here.

23 One of them under the transportation  
24 section was more vehicle trips leads to accelerated  
25 deterioration of roads. It didn't specify any roads

1 but there are many roads in the Lakes Residential  
2 District that are of no better quality than a simple  
3 driveway, and on a day like today some of them are  
4 borderline unsafe or impassable.

5 And fast forwarding to the first slide  
6 where it shows the building envelope, one of the  
7 issues that's framed there with no particular lot in  
8 mind but a hypothetical 120-foot deep by 50-foot  
9 wide lot, currently our setback regulation is from  
10 most roads and from the water is 50 feet. And the  
11 example showing there is a 20-foot deep lot that it  
12 has a building envelope but it's not a building  
13 envelope that would allow a full-time single-family  
14 home based on what our ordinance requires, and it  
15 presents the difficulty of building a new home, the  
16 person is inclined to put it directly in the middle  
17 of the lot and will encroach on both setbacks.

18 As one possible solution that I had  
19 proposed including the Master Plan discussion, and  
20 at this point the Planning Commission hasn't said  
21 yes or no to it, they haven't seriously debated  
22 resetting up roadside setback. That's a policy  
23 issue that would get to either through the Master  
24 Plan or possibly in the future text amendment to the  
25 Zoning Ordinance. So one possible solution was, as

1 an example, in this instance if we were to make a  
2 25-foot setback from the road and maintaining a  
3 50-foot setback by the water, it would acknowledge  
4 to the Applicants that we prioritize these setbacks  
5 first by the water side because of lake water  
6 quality and soil erosion and sedimentation while  
7 still allowing enough room within that 25 feet to  
8 park a car and have some space between the road  
9 right-of-way and the house. 25 foot is enough space  
10 to park most cars. Our parking standards in our  
11 zoning ordinance if someone builds a parking lot,  
12 the minimum depth of a parking space is 20 feet. So  
13 in 20 feet you can get most cars, and with a 25-foot  
14 minimum roadside setback it would almost guarantee  
15 that most lots if they were built according to that  
16 would be allowed to park cars within that setback  
17 area.

18 And the reason this is shown is to show a  
19 viable building envelope that's 45 feet deep. And  
20 whether it's wide enough depends on the width of the  
21 lot. 50 feet would be wide enough. But a  
22 hypothetical that shows, it encourages Applicants to  
23 build in that envelope. And if they were to seek  
24 variances that they would use as much envelope as  
25 possible before seeking those variances.

1           Now, the building envelope is there with  
2           the understanding that because you have the building  
3           envelope doesn't give you a right to build it all  
4           out. If you have two acres as a building envelope  
5           if you build within a whole building envelope you're  
6           going to end up with it overstating the lot  
7           coverage. Just because you have it doesn't mean you  
8           can fill it all up with lot coverage. We have lot  
9           coverage standards which this slide didn't  
10          contemplate.

11           So at the meeting, the Planning Commission  
12          didn't go into much detail as far as that if they  
13          liked the 25 feet or not. It was thrown out as one  
14          possible solution to maybe incur some discussion on  
15          the matter. I don't think it got really any  
16          discussion yea or nay. So that would be something  
17          that they'd take up in the future, but it was  
18          something that I put there as a proposal, not  
19          something that they asked for or even encouraged.

20           So I think it's just the purpose of my  
21          description there is just to frame this as a policy  
22          issue that the Planning Commission is currently  
23          considering. If they get to the point where they  
24          recommend it, that policy will ultimately be decided  
25          by the Township Board and amending the ordinance if

1 it does that.

2 In terms of how this relates to the Master  
3 Plan, if the Master Plan is adopted before any  
4 Zoning Ordinance amendment that may take place in  
5 the future, then the Master Plan can encourage  
6 different regulations in the lakes to minimize  
7 variances. That could mean dozens of different  
8 zoning amendment proposals. But as specific as the  
9 Master Plan will get it probably won't be as  
10 specific as saying we want X number of feet per  
11 front yard setback or we want X percent of lot  
12 coverage for certain sizes of homes.

13 The Master Plan won't contemplate that. It  
14 will get down as specific as rewriting zoning  
15 regulations to minimize variances, but in terms of  
16 taking up that policy and quantifying that into  
17 numbers, that's something they'll do as a zoning  
18 exercise as it's spelled out in Zoning Ordinance and  
19 not as a planning exercise as they go through the  
20 Master Plan.

21 CHAIRMAN BURCH: Is that all, sir?

22 MR. SLOAN: That's all.

23 CHAIRMAN BURCH: Thank you, Mr. Sloan.

24 Miss Kelly?

25 MS. KELLY: I guess I want to comment on my

1 motion. I made it not because I don't disagree with  
2 Ms. Herda Sprawka because she accurately points out  
3 even as a newbie that the Master Plan is proposed,  
4 it's certainly not passed, hasn't even had -- it's a  
5 citizen advisory meeting that it's gone through. It  
6 hasn't gone through the whole process of public  
7 comment.

8 I'm also aware because I read the draft  
9 minutes of the comments that Ms. Adams talked about.  
10 I don't know that what Mr. Godek presented tonight  
11 is going to change my mind on this, but I think  
12 because he has presented it we owe it to ourselves  
13 to thoroughly investigate and contemplate his  
14 argument and we owe it to ourselves to be able to  
15 put that in a motion at some point to prove that we  
16 did that, and I don't feel prepared to do it at this  
17 moment. So I guess I make those comments in support  
18 of my motion.

19 CHAIRMAN BURCH: Thank you, Miss Kelly.  
20 Any other discussion? Mr. Gajewski?

21 MR. GAJEWSKI: I guess I'd just mention  
22 that in relationship to ADTs, average daily trips,  
23 that studies show that they show a significant  
24 decrease in ADTs with aging in place residents, just  
25 to throw that in as a comment.

1           And as far as Mr. Bachman's comment, he was  
2 concerned about drainage issues, that Mr. Godek did  
3 in fact go above and beyond to protect lake water  
4 quality by proposing a rain garden system that is 47  
5 percent of the corresponding roof area, not a mere  
6 10 percent. So that's significant in protecting the  
7 quality of our lakes. That's my comments.

8           CHAIRMAN BURCH: Thank you, Mr. Gajewski.  
9 Further comments, Members of The Board? Miss Kelly?

10           MS. KELLY: Just one further comment. If,  
11 in fact, this motion is successful, that Miss  
12 Bolyard get draft minutes to all the ZBA members  
13 before the next meeting of the Planning Commission  
14 Advisory Hearing. Actually, all three advisory  
15 hearings would probably make sense to get comments  
16 from, because they were all targeted toward specific  
17 areas but they were comments made on all the areas  
18 at all of them.

19           CHAIRMAN BURCH: I'll let this record show  
20 that Ms. Bolyard did indicate that it would be  
21 possible to provide the members of the Zoning Board  
22 of Appeals with the comments from all three  
23 meetings.

24           Having said that, we call the vote to the  
25 motion to defer Mr. Godek's request to the next

1 meeting of the Zoning Board of Appeals to allow the  
2 members of the Zoning Board of Appeals to review  
3 Mr. Godek's further information and, in addition,  
4 review the comments of the various planning  
5 meetings.

6 Because of the extended nature of this  
7 request, at the discretion of The Chair I am going  
8 to call for an individual vote on the motion rather  
9 than a yea or nay in masse. Ms. Adams, how do you  
10 vote?

11 MS. ADAMS: Yes.

12 CHAIRMAN BURCH: Miss Adams votes yes.  
13 Miss Herda Sprawka?

14 MS. HERDA SPRAWKA: Yes.

15 CHAIRMAN BURCH: Miss Herda Sprawka votes  
16 yes. Mr. Gajewski?

17 MR. GAJEWSKI: Yes.

18 CHAIRMAN BURCH: Mr. Gajewski votes yes.  
19 Miss Kelly?

20 MS. KELLY: Yes.

21 CHAIRMAN BURCH: Miss Kelly votes yes and  
22 The Chair votes yes. Sir, we will take up your  
23 request at our next meeting. Hopefully, for the  
24 last time.

25 MS. KELLY: You got to quit adding stuff.

1 MS. HERDA SPRAWKA: Quit bringing us stuff.

2 MR. GODEK: It's your stuff.

3 MS. KELLY: If I may, Mr. Chair.

4 CHAIRMAN BURCH: Miss Kelly.

5 MS. KELLY: With Ms. Bolyard's help, we've  
6 prepared an inventory, if you will, of documents  
7 that we have on file. And we have more now but if  
8 you guys would like to take this and review it and  
9 make sure we've not missed anything.

10 ATTORNEY TEICHER: Thank you.

11 CHAIRMAN BURCH: Thank you, Miss Kelly.

12 Next item on our agenda this evening, agenda item  
13 No. 2, appeal 09 ZBA 705, David and Sally Cross,  
14 9122 McGregor Road.

15 MR. SHAY: James A. Shay appearing on  
16 behalf of both Mr. and Mrs. Cross. They did want to  
17 apologize to The Board as they were unable to attend  
18 today. They couldn't make it back from Florida and  
19 they are tending to some personal matters that they  
20 couldn't get back here in time for. They did send  
21 two of their children and one of their grandchildren  
22 that may assist if we need them in the future.

23 I would ask if we can move the table up to  
24 make it efficient so I can refer to documents as we  
25 discuss the matter.

1 MS. KELLY: Sure.

2 CHAIRMAN BURCH: Mr. Shay, that is  
3 appropriate, sir.

4 MR. SHAY: Thank you very much.

5 CHAIRMAN BURCH: Mr. Shay, could you spell  
6 your name for the record, sir.

7 MR. SHAY: Yes, S-H-A-Y. And I can give  
8 you my card with the information on it.

9 CHAIRMAN BURCH: Thank you. And could you  
10 please also give a copy of your card to our court  
11 reporter. Thank you very much.

12 We have a very extensive list of persons  
13 noticed for this request. At the discretion of The  
14 Chair, I am going to dispense with reading of that  
15 list this evening; however, should anyone have any  
16 questions or desire to see this list it will be  
17 available in the Township offices and Ms. Bolyard or  
18 Mr. Sloan, either, can provide the list to you.

19 Mr. Sloan, would you please present this  
20 case to The Board?

21 MR. SLOAN: Yes. Before I get started, the  
22 application listed the roadside setback at 67 and a  
23 half feet and a water side to 20 feet. When I  
24 scaled it as it was shown in the site plan, the lot  
25 platted survey, I had measured the roadside setback

1 to the house to be about 44 feet, about 28 feet from  
2 the water. And I think for the most part --

3 CHAIRMAN BURCH: Mr. Sloan, could I ask you  
4 to hold for one moment. Let us shut the doors,  
5 please, so the other conversation does not overwhelm  
6 you.

7 MR. SLOAN: So these numbers that I wrote  
8 in on the front of the application are relative  
9 since they're both within setback. That's just how  
10 I scaled it on the survey.

11 On September 4th of 2008 Dexter Township  
12 issued a zoning violation to Mr. and Mrs. Cross for  
13 replacing the back side of the roof, the water side,  
14 without obtaining a zoning permit. On September 11,  
15 2008, I met with Mr. Cross, informed him I observed  
16 the new roof being constructed at a higher profile  
17 than the previous roof.

18 Because the house is a legal nonconforming  
19 structure, and the new roof expands the  
20 nonconformity, Section 19.04(A)(1) requires the  
21 Applicant to seek a variance prior to applying for a  
22 zoning permit, and on the same day I issued a stop  
23 work order to Mr. and Mrs. Cross. The enclosed  
24 pictures illustrate the change in profile that were  
25 included in my report.

1           The Applicant's materials stated that the  
2           new roof was constructed in light of an alleged  
3           building code violation. Although the Chelsea Area  
4           Construction Agency issued a building permit for  
5           this work, no zoning permit was ever approved by the  
6           Township. I wrote to Chelsea Area Construction  
7           Agency on September 5, 2008 -- that letter is  
8           enclosed -- informing them that the work was in  
9           violation of the Dexter Township Zoning Ordinance  
10          and requested that they rescind their building  
11          permit.

12           Now, I know the Applicant will go into this  
13          in a little bit of detail but Chelsea Area  
14          Construction Agency issued a permit to rebuild the  
15          roof and they did so without a zoning permit from  
16          Dexter Township. Nobody in our office had  
17          authorized Chelsea Area Construction to do anything  
18          in terms of issuing a permit but they did anyway, so  
19          there was an error there on their part in terms of  
20          this permit.

21           Briefly, in terms of storm water  
22          management, in the Applicant's materials he wrote  
23          that they didn't believe storm water management was  
24          necessary on the site. I'm sure we can go into that  
25          in more detail later if we need to. There will be

1 no changes to the lot coverage. The lot coverage  
2 will remain at 16.35 percent. Maximum in the  
3 district is 25 percent so it's well under.

4 And basically what we're looking at with  
5 this one is a profile change based on some alleged  
6 building code violations which are in the materials  
7 which I'm sure we'll go into in a little bit of  
8 detail. The last thing I want to go over relates to  
9 an error that was made almost two years ago.

10 On February 21st of 2007, I issued a zoning  
11 permit for a 12-foot by 16-foot shed near the edge  
12 of the road right-of-way. The shed had previously  
13 been constructed without a zoning permit or variance  
14 and had received a stop work order on December 19th  
15 of 2006. When I issued the zoning permit, the  
16 Applicant had represented that the 12-by-16 shed  
17 replaced an indential shed in the same location  
18 that was previously demolished.

19 The only evidence that I could find of any  
20 prior shed was a 2005 aerial photograph which is  
21 enclosed with my report and an old assessing photo  
22 from 2006 where it appeared as though it was located  
23 on a concrete pad in the Applicant's yard which was  
24 approximately 15 feet from the right-of-way. While  
25 I couldn't ascertain the dimensions of the shed

1 based on the photographs, I gave the Applicant  
2 benefit of the doubt that it was a 12-by-16 shed.

3 When the shed was placed closer to the road  
4 than 15 feet, I revoked the zoning permit although  
5 the aerial photo suggests the previous setback of 15  
6 feet, the approved plot plan that I had stamped and  
7 signed scaled the front yard setback at about five  
8 feet. In retrospect I should have either changed  
9 the plot plan to scale back the 15 or write 15 feet  
10 on the plan. So there were some omissions there on  
11 my part. I felt it best to revoke the permit, but  
12 given the record of what had taken place I wasn't  
13 prepared at that time to take any kind of formal  
14 enforcement action.

15 And in my letter on August 6th, 2007 to  
16 Mr. Cross I noted the errors on behalf of the  
17 Applicant and myself and requested moving the  
18 12-by-16 shed to the concrete pad and turning it 90  
19 degrees to at least mimic the appearance of the  
20 profile of the previous shed.

21 In terms of this variance request, since I  
22 typically don't make specific recommendations to the  
23 ZBA as far as up or down, but one request I do have  
24 is that if this variance is ultimately approved I  
25 would request that as a condition of approval the

1 ZBA require the Applicant to move the 12-by-16 shed  
2 onto the concrete pad or the location thereof and  
3 turn it 90 degrees so as to mimic the appearance and  
4 profile of the previous shed. By doing so I think  
5 such an increased setback to 15 feet from the  
6 right-of-way will improve visibility from the road  
7 and, therefore, traffic safety.

8 So at that point, I'll take any questions  
9 that you have.

10 CHAIRMAN BURCH: Thank you, Mr. Sloan.  
11 Members of the Board have any questions from  
12 Mr. Sloan at this point?

13 MS. KELLY: I just have one.

14 CHAIRMAN BURCH: Miss Kelly.

15 MS. KELLY: Curiosity more than anything.  
16 Did Chelsea Area Construction Agency revoke their  
17 permit as you asked them to?

18 MR. SLOAN: I believe they did. I don't  
19 know if I got any formal revocation from them.

20 MS. KELLY: It's okay.

21 MR. SLOAN: But I made them aware over the  
22 phone and through a letter.

23 MS. KELLY: That's all I have. I'm sorry.

24 CHAIRMAN BURCH: Thank you, Miss Kelly.  
25 Mr. Shay, you have the floor, sir.

1 MR. SHAY: Thank you. Would you prefer me  
2 to stand up and address The Board?

3 CHAIRMAN BURCH: However you are most  
4 comfortable.

5 MR. SHAY: First of all, I used to be on  
6 the village counsel in Pinckney for 7 terms, 14  
7 years. Thank you for your service to your  
8 community. It's a thankless job and you're here  
9 doing that because you care about your community. I  
10 have extensive experience with zoning issues so I  
11 know what you're doing, and however the outcome  
12 thank you for your service to your community.

13 This issue here, I guess we can address it  
14 a couple of different ways. There's the issue  
15 concerning the shed that I got notice of yesterday  
16 when I got a copy of the report. I believe I'm  
17 objecting to any issue regarding the shed. I can go  
18 into details why if need be here, and that would be  
19 at the discretion of The Board. I don't believe it  
20 has any bearing on this issue and I don't believe  
21 The Board has the right at this point to condition  
22 any request here based on changing a shed that a  
23 permit was issued for. So I'll leave that to your  
24 discretion how you want me to handle that because I  
25 can go into detail on that and explain the reasons

1           why.

2                         CHAIRMAN BURCH: Mr. Shay, I would like to  
3           hear your explanation as to why we should not  
4           consider the shed.

5                         MR. SHAY: Okay.

6                         CHAIRMAN BURCH: Miss Kelly.

7                         MS. KELLY: If I may ask a clarification  
8           question? Do you mean we shouldn't even be talking  
9           about the shed tonight?

10                        MR. SHAY: I don't believe you have, one,  
11           the authority to condition the zoning application  
12           here contingent on moving a preexisting shed that a  
13           permit was issued for and so I'm objecting to that  
14           issue straight across the board.

15                        MS. KELLY: Okay.

16                        MR. SHAY: However, The Board will consider  
17           anything they deem necessary.

18                        CHAIRMAN BURCH: Thank you, sir.

19                        MR. SHAY: Okay. The issue with the shed  
20           is that apparently from all records that I can  
21           ascertain -- and, first of all, I did want to  
22           correct in my application there was an error. I did  
23           want to make that correction. They purchased their  
24           property in 2000 and I put in 2008, so I did want to  
25           make that clarification.

1           It appears that the petitioners in this  
2 matter at some point started to build a shed  
3 approximately in 2006. There was a stop work order  
4 issued. That shed was removed or altered and  
5 changed. However that transpired, a permit and  
6 application was submitted. That was included with  
7 the packet of information. It's been crossed out,  
8 says revoked on it; however, that application was  
9 submitted to the Township. It was signed by the  
10 Applicant, Mr. Cross, to build a shed.

11           The shed that there was originally on the  
12 property had been removed prior to that time. There  
13 was another shed that was being constructed. That  
14 one either got tore down or modified. Irregardless  
15 of those facts, the fact is a permit was issued to  
16 them. The additional information in the application  
17 was written in not by Mr. Cross but was written in  
18 by one of the Township officials.

19           There was two letters and those are also  
20 included in this packet of information to the  
21 Township. Included with the application was a  
22 mortgage survey that was accepted with the drawing  
23 and indication of the shed. The shed clearly is  
24 indicated as 12-by-16 and the dimensions from  
25 looking at this it is clear that the 16-foot-wide

1 section is facing the road, it's not facing turned  
2 the other way as is being requested tonight.

3 This was stamped and approved by a Township  
4 official and it's site plan approved. It's stamped  
5 it was on 2-21-07. There is clear on here a  
6 dimensional line from the corner of the house. It  
7 jets out to where the proposed shed is. There is no  
8 indication as to the number of feet there, is there?  
9 But it's also very clear that this shed is right  
10 next to the road. So it appears to me looking at  
11 this application, and I believe it would to anyone  
12 else, that five feet or so was probably about the  
13 dimensions, judging the lot width here.

14 Second of all, there was also a drawing of  
15 the shed. It shows the size of it and the  
16 dimensions on how it would face the road. That is  
17 how it's constructed. There was a letter sent to  
18 Mr. Cross in -- I had one color copy here and I  
19 apologize for taking up your time on that. But the  
20 first letter was addressed to The Board. There was  
21 one in August and there was one earlier, I believe  
22 it's in June or July, addressing the issue of the  
23 shed. There was some requests made in that letter  
24 but the ultimate fact was there was no stop work  
25 order issued, the building was constructed, there

1           were pictures -- and these are supplied to The Board  
2           here -- and if you look they're done by digital  
3           camera and there's a date on these photos which is  
4           extremely important. It is 7-17-07. The shed at  
5           that point is substantially completed.

6                         It appears that there's some decorative  
7           work on the side or if they had some shingles here,  
8           but the shed is substantially completed at this  
9           time. There was no -- the permit was not revoked,  
10          there was no -- there was a request but there was no  
11          order saying that any changes had to be done to this  
12          shed. And you can look at the letter addressed to  
13          Mr. Cross from the Township official. Specifically,  
14          it does not say the shed has to be moved. I've been  
15          at this property. They've been talking about a  
16          concrete slab. I don't see a concrete slab there.  
17          I see grass. So I don't know if there was one that  
18          existed in 2006, 2007, when it was removed, but I  
19          don't see any -- today it was nice and clear on the  
20          property other than being real soggy.

21                         Second, the next letter that went to  
22          revoking the permit, that came in August 6th of 2007  
23          indicating the permit was being revoked; however,  
24          the shed was built. Mr. Cross -- for whatever  
25          reason, the Township and Mr. Sloan indicated there

1 was some mistakes made on his part; however,  
2 Mr. Cross applied for a permit, was issued a permit,  
3 built the shed in compliance with that permit. The  
4 size of it and it's in compliance with the site  
5 plan, it's approved.

6 The dimensions are not listed on that site  
7 plan. And it is reasonable for any member in this  
8 Township that applies for a permit, receives a  
9 permit to rely on that permit, and to ask anyone  
10 three years later to move a shed when it's been  
11 built with a permit, with an approved site plan is  
12 unreasonable and is burdensome, and that request  
13 just should not be done.

14 The shed was completed prior to any permit  
15 being revoked, and I would suggest that the reason  
16 no stop work order was issued because the shed was  
17 completed in August when this letter was drafted and  
18 the permit was revoked. So, therefore, I don't  
19 believe that's a done issue. If it was done in  
20 error for some reason two years ago, this should  
21 have been brought up and action taken by the  
22 Township.

23 The bottom of the letter from August 6th  
24 says, the last sentence: Please let me know if this  
25 solution is agreeable to you. That's a request.

1 It's not an order. It's a request from the Township  
2 and it was a suggested solution to what the Township  
3 believed was a problem. Mr. Cross did not believe  
4 he had a problem because, one, he got a permit, he  
5 submitted a site plan, he built the shed to that  
6 site plan, and this is a request.

7 Obviously, he didn't move the shed, so your  
8 request to Mr. Cross in all due respect was denied  
9 on his part. That put the burden back on the  
10 Township to either come up with another solution,  
11 discuss the matter or take action on this issue.  
12 It's now been two years since that point. I don't  
13 believe it's fair to Mr. Cross to try and bring this  
14 issue up and request changes here. It just isn't  
15 fair to the Township or to any residents because  
16 otherwise the Township can come after anyone that  
17 received a permit. If you got a permit to build  
18 your new house, you built your house and then the  
19 Township comes up we'd really like you to move it 15  
20 feet, that's unreasonable and I would suggest this  
21 is unreasonable.

22 MS. HERDA SPRAWKA: Can I ask a question?

23 CHAIRMAN BURCH: Yes, ma'am.

24 MS. HERDA SPRAWKA: I'm looking at the  
25 zoning permit with the mark through it and the

1 writing here says demolishing the existing  
2 nonconforming shed, which was built without a zoning  
3 permit. A new 12-by-16 shed will replace it and  
4 shall be the same dimensions, profile, square  
5 footage and location of the previous shed. That was  
6 stated in the permit, correct?

7 MR. SLOAN: Uh-huh.

8 MS. HERDA SPRAWKA: And is the shed in the  
9 same location as the previous shed that is  
10 demolished, in the exact location? That's my  
11 question.

12 MR. SLOAN: Right. The previous shed that  
13 I was referring to in the zoning permit, and that's  
14 where the communication got mixed up. There's a  
15 black and white photo taken or uploaded from the  
16 session that we had on March 6th of 2006. And it  
17 shows a shed there, it doesn't give the dimensions,  
18 shows a concrete pad. And looking at the evidence  
19 at the time when I wrote the permit, that shed  
20 didn't appear to be in existence when a new shed was  
21 put there.

22 I had assumed based on the record that we  
23 had, it wasn't a great record but it was a record we  
24 had, that it was this shed that was being replaced  
25 where you got the gamble roof side facing the road.

1 I still didn't know the dimensions but I went on the  
2 assumption that maybe it was 12 by 16. So based on  
3 the permit, I was referring to this shed. And maybe  
4 it wasn't clear in the zoning permit. I can  
5 certainly understand if it's not. And if it wasn't  
6 interpreted that way by the Applicant I can  
7 understand that as well, but it does show this  
8 concrete pad.

9 And I've got an aerial photo in here from  
10 2005 that shows the very same shed, at least the  
11 appearance of the shed, where there's a shed, what  
12 looks to be a concrete pad there and then two boats  
13 between the shed and the road right-of-way as close  
14 as it can be.

15 MS. HERDA SPRAWKA: Uh-huh.

16 MR. SLOAN: And so when I revoked the  
17 permit I decided not to do any formal enforcement  
18 action there in terms of writing a ticket or  
19 anything like that but I thought it was only right  
20 to -- if I saw a wrong that was in my permit or  
21 evidence that was incomplete or it didn't exist and  
22 I felt that it was wrong of me at that time to issue  
23 the permit, then I believe it's my duty as zoning  
24 administrator to revoke that permit.

25 MR. SHAY: What I would indicate is

1 specifically a resident of the Township, Mr. Cross,  
2 detrimentally lied on the permit that was issued,  
3 built the shed. And if there was a problem with  
4 that, I think that the burden would be on the  
5 Township at the point to stop -- if they thought so  
6 strongly about the issue that they needed to take  
7 action, the action should be taken -- and this shed  
8 wasn't built overnight.

9           There was a prior letter issued earlier.  
10 The shed wasn't completed at that time. If you wait  
11 as a Township and wait for the structure to be  
12 completed and then request it or revoke a permit  
13 afterwards, you allowed someone to go ahead and  
14 build something. If you knew there was a problem,  
15 that's the purpose the Township has the right to  
16 issue stop work orders, and a stop work order could  
17 have been issued and been addressed before this shed  
18 was completed if it was a problem. However, as I  
19 see the approved plot plan, it's approved for it  
20 right up by the road.

21           MS. KELLY: Hang on.

22           CHAIRMAN BURCH: Miss Kelly.

23           MS. KELLY: There's a couple things I want  
24 to clear up. The first is on Patrick's January 23,  
25 2009 letter, the second sentence here says this shed

1 had previously been constructed without a zoning  
2 permit or a variance, and he received a stop work  
3 order on December 19th, 2006.

4 Am I missing something here? Is it your  
5 admission that your client built the shed without a  
6 permit and then he retroactively because we --

7 MR. SHAY: No.

8 MS. KELLY: -- said something to him -- let  
9 me finish. He came in and got a permit, we couldn't  
10 figure out what the permit should actually be  
11 because he demolished the first shed without a  
12 permit too.

13 So a zoning administrator in his good  
14 graces said I'm not going to nail you on that, I'll  
15 write you a permit to do this as I can kind of  
16 construct it used to be, I'm giving you the benefit  
17 of the doubt because clearly it was a nonconforming  
18 shed by anybody's standards, and he wrote the permit  
19 to do what was already done.

20 MR. SHAY: I'm going to object to that.

21 MS. KELLY: Well, that's how I'm piecing  
22 this together and I want Mr. Sloan to tell me if I  
23 have it wrong.

24 MR. SLOAN: When we took the pictures in  
25 2006, does the Cross file have pictures taken in

1 December of 2006 of the original shed?

2 MS. KELLY: Patrick, can you answer my  
3 question? Was a permit obtained before that shed  
4 was built, the one that's sitting there today?

5 MR. SLOAN: No. The shed was built in --  
6 well, December of 2006 is when we observed the  
7 original foundation.

8 MS. KELLY: Right, after it was built.

9 MR. SLOAN: And is that the property file?

10 MS. KELLY: My point.

11 MR. SLOAN: Let me dig through the property  
12 file here just to make sure that I'm okay.

13 In our property file, the code enforcement  
14 officer had taken a picture of the shed, and the  
15 shed that he took the picture of was similar to that  
16 shed on 12-20-06. It had a gambrel roof -- or no, a  
17 gable roof. It had a gable roof. And it was shown  
18 there next to a shed that was shown in the assessing  
19 photo from 2006.

20 So at that time, that little shed, that  
21 smaller shed did exist and the violation was for --

22 MS. KELLY: The new shed, the replacement  
23 shed that there wasn't a permit for until after it  
24 was built.

25 MR. SLOAN: The replacement shed. Correct.

1 Correct.

2 MS. KELLY: That's my point.

3 MR. SLOAN: So the original 2006 violation,  
4 Bart took the picture. That was of the picture that  
5 Bart took and it shows it next to the shed that was  
6 in the assessing photo.

7 Now, what happened was when the permit was  
8 issued for a 12-by-16 shed, and one of the things  
9 that I had overlooked when I wrote the permit was  
10 the scale of the old shed was smaller than 12-by-16  
11 but I didn't know the dimensions. So going by  
12 12-by-16 I won't probably dispute that point much,  
13 but it appears as though what happened after the  
14 permit was it appeared to be the same shed that was  
15 in violation in December with the change being  
16 adding a gambel pitch to it instead of the gable  
17 roof pitch. And the reason that was added was to  
18 mimic the previous shed which, as it turns out, in  
19 writing the permit the intent was to match the  
20 appearance of the shed taken in the assessing photo  
21 in 2006.

22 MS. KELLY: Okay. But I'm still, you know,  
23 I'm trying to -- this falls into no good deed goes  
24 unpunished. We should have written a stop order and  
25 demanded that the thing be torn down because you

1           couldn't prove it was ever there.

2                       MR. SLOAN: In retrospect, with the  
3 incomplete record -- there was a record that there  
4 was a shed, but in retrospect we should have gone  
5 straight to the Zoning Board of Appeals. Hindsight  
6 is 20/20 but when I revoked the permit the best  
7 thing I thought at the time was just revoke the  
8 permit based on the admissions I would say of both  
9 sides.

10                      MS. KELLY: And so what I'm hearing here is  
11 a compromise -- a justified compromise in your  
12 estimation, Patrick, is that if Mr. Cross just  
13 merely moves this thing to the place where  
14 photographs indicate previously it was that we'll  
15 call it even, and I don't think that's an  
16 unreasonable position.

17                      MR. SHAY: That would -- first of all --

18                      MS. KELLY: I mean, you know, to rely on a  
19 permit you got after you did what you did because  
20 you didn't feel it was necessary to ask apparently  
21 doesn't make sense to me.

22                      MR. SHAY: I would assume that you deal a  
23 lot with people building things or changing things  
24 without permits. Knowing as an attorney and many  
25 years in local government, I know those particular

1 facts and what has to be done or not done.

2 The average citizen does not realize. They  
3 will call the building department and ask do I need  
4 a permit for a shed and most times they're told no  
5 because they're not required to have a building  
6 permit. They are required usually to get a zoning  
7 permit or an application from the Township or City  
8 or Village, but they're not required to if it's  
9 under certain square footage to get a building  
10 permit and they go ahead and build them.

11 MS. KELLY: Did Mr. Cross call? I can  
12 assure you he would never be told he didn't need a  
13 permit in our Township.

14 MR. SHAY: Oh, I agree with that.

15 MS. KELLY: And not since.

16 MR. SHAY: What I'm suggesting is most  
17 times people call the building department. Unless  
18 they've had prior dealings, they don't know  
19 specifically they got to get a permit from the local  
20 community to go get another permit.

21 MS. KELLY: So Mr. Cross didn't know  
22 whether he needed a permit or not because he never  
23 called. He tore down a building without a permit.  
24 He built another building without a permit and then  
25 when we finally did catch him we did write him a

1 permit because -- and if I'm getting you right  
2 you're saying we were too nice. We shouldn't have  
3 done that.

4 MR. SHAY: No, not -- nothing could be  
5 further from the truth. What I'm saying is the  
6 Township represents and is for the common good of  
7 the citizens here.

8 MS. KELLY: Sounds like that's what we were  
9 trying to do.

10 MR. SHAY: You're implying that Mr. Cross  
11 was trying to do something sneaky or underhanded or  
12 that -- he had a shed I'm assuming that was in  
13 disrepair. He removed that shed. He wanted to  
14 rebuild the shed. The Township said stop, here's a  
15 stop work order, you need to get a permit. He  
16 applied for a permit, he got a permit, and he  
17 submitted the plans. And I would suggest -- this is  
18 just a nonscale drawing here -- that's what the shed  
19 looks like.

20 MS. KELLY: Let me suggest to you I am  
21 absolutely not trying to characterize Mr. Cross's  
22 motives at all.

23 MR. SHAY: Okay.

24 MS. KELLY: What I'm saying is it appears  
25 to me this is a real simple solution and I don't

1 understand why Mr. Cross doesn't want to comply with  
2 putting the shed exactly where it appears by all  
3 credible evidence it used to be because that's the  
4 shed he had permission to rebuild.

5 And Patrick's permit clearly -- to his own  
6 words to the contrary he says he made a mistake. I  
7 don't think he did.

8 MR. SHAY: I accept it.

9 MS. KELLY: And I think because he didn't  
10 explicitly say something on a permit doesn't mean  
11 the law doesn't require it but I think he was pretty  
12 darn specific.

13 MR. SHAY: I expect and I applaud him for  
14 his candor that he made some mistakes here, but to  
15 try to condition a zoning variance request years  
16 later based on a mistake made by one or both parties  
17 on a building that's already constructed, this isn't  
18 just something you go with two men and pick up and  
19 move. This is 12-by-16 shed. It's built, the yard  
20 is landscaped, and it's built to the specifications  
21 and in compliance with the site plan that was  
22 approved.

23 MS. HERDA SPRAWKA: But it's not in  
24 compliance with the permit.

25 MS. KELLY: Right, it's not in compliance

1 with the permit at all.

2 MR. SHAY: Then I would suggest that the  
3 Township should have taken action at the time when  
4 it was being constructed by either putting a stop  
5 work order or taking action or further action or  
6 ticketing him. But to try to years later get  
7 something like that --

8 MS. KELLY: Years later when we noticed it,  
9 we took action.

10 MR. SHAY: It was --

11 MS. KELLY: I mean, I doubt that you're  
12 going to find anywhere in Patrick's notes that he  
13 saw this a year ago and didn't do anything about it.

14 MR. SHAY: No, I think you'll see right  
15 clearly that he seen it in 2007 when he wrote the  
16 letter and he sent a copy of the permit with it  
17 crossed out saying after the fact I revoke your  
18 permit.

19 MS. KELLY: So I'm lead to believe that  
20 Patrick's please let me know if this solution is  
21 agreeable to you, he put a solution out there and  
22 because Mr. Cross didn't answer --

23 MR. SHAY: He didn't answer.

24 MS. KELLY: -- that's our problem.

25 MR. SHAY: Or he didn't give the answer

1           that the Township would like -- or not the Township  
2           would like, Mr. Sloan would like.

3                         In either case, the shed was built and it  
4           was constructed prior to the permit being revoked.  
5           The Township hasn't taken action for years. A  
6           citizen has a right to rely on the permit issued and  
7           the Township would have a right if they thought so  
8           implying to take action on that. None of that took  
9           place.

10                        MS. KELLY: I disagree with you, Mr. Shay.

11                        MR. SHAY: Well, and that's -- I respect  
12           your disagreement. I'm just saying --

13                        MS. KELLY: I respectfully disagree.

14                        MR. SHAY: Those are the reasons I don't  
15           believe that this application should have anything  
16           to do with this shed.

17                        MS. ADAMS: Do we have any answer from the  
18           Crosses why it wasn't built on the concrete pad?

19                        MR. SHAY: I don't believe there was a  
20           concrete pad there. What I believe is there was  
21           some cement blocks or some patio blocks put down  
22           there. I did see one or two in the yard there and a  
23           little walkway in there but I didn't see any  
24           concrete slab or any sports where a concrete slab  
25           would have been removed.

1 MS. KELLY: It's pretty clear in these  
2 pictures.

3 MR. SHAY: Well, I would suggest come look  
4 at the property.

5 MS. ADAMS: And putting it close to the  
6 road, I mean, that seems sort of --

7 MR. SHAY: When I went down there, you have  
8 a bridge for the access point for public access to  
9 Portage Lake and you go further up by the commercial  
10 district and you have a bridge there. Between those  
11 two sections there are 35 sheds or garages that are  
12 in front of the houses all facing the road.

13 I would suggest there are many sheds or  
14 garages that are closer than that to the road,  
15 particularly right across from all the stores right  
16 in there. You can't even see the houses because of  
17 the road. I don't think it's out of the ordinary  
18 and I don't think that has any effect on traffic.  
19 It fits in with the area that's built there.

20 MS. KELLY: If I may add, some of those  
21 things and they've been allowed to be rebuilt  
22 because they were there and they came in and they  
23 got the permits before they did what they wanted to  
24 do and made us guess. I just --

25 MR. SHAY: I don't want to see Mr. Cross

1           punished for not getting a permit on a prior issue  
2           that was settled.

3                   MS. KELLY: But it clearly isn't settled.

4                   MR. SHAY: Well, we respectfully disagree.

5                   CHAIRMAN BURCH: Mr. Gajewski.

6                   MR. GAJEWSKI: I guess in looking at the  
7           whole picture here, looking at this particular  
8           application, it is a refreshing single-story house  
9           that does not overpower the site, they have kept  
10          everything to the human scale. It has a lot area  
11          coverage of 16.35 percent which is great; however,  
12          the new shed now appears to be closer to the  
13          right-of-way.

14                   So looking at Patrick's photo page which we  
15          have in our packets, the third photo here, so I  
16          looked at the location of the shed as it exists  
17          today, and as you look at photo three you can see  
18          that the shed's location does not compromise the  
19          Washtenaw County Road Commission's clear vision  
20          triangle for safe egress. As far as you can see  
21          here, Mary, that the Washtenaw County -- the Road  
22          Commission, they require a 10-foot -- for private  
23          drives it's a little different than nonresidential.  
24          For a residential they require a 10-foot setback  
25          from the edge of the road. With a 35-mile-an-hour

1 speed limit they require a 390-foot triangle to the  
2 right. It's 335 to the left. It's further to the  
3 right because when people have to cross a lane when  
4 they go into traffic, so it has to be a little bit  
5 further to the right.

6 So that is just as showing the triangle  
7 that there's not a safety issue there. I can see a  
8 future safety issue with the location of those  
9 spruce trees that will eventually create a vision  
10 problem but currently there's not an issue there.  
11 So I just wanted to show, just looking at the safety  
12 issue of whether that shed is a problem as far as  
13 safe egress.

14 And then if you look at photo four, which  
15 is the photo to the right of that, you can see that  
16 the shed is now tucked under the canopy of a large  
17 twin oak that will capture storm water and help  
18 mitigate storm water runoff. So I was looking at it  
19 from a storm water issue and from a safety issue  
20 where that shed is now.

21 However, the shed can be moved back a few  
22 feet to its original location and turned 90 degrees  
23 at the Board's discretion, and that's if they feel  
24 that's necessary. So, you know, let's ask the other  
25 Board members for their opinion. Mr. Shay states

1           that this is a preexisting shed and a permit was  
2           issued and should not be rescinded. So just see  
3           what the rest of the Board thinks on this as far as  
4           in that regard. And then we can have him address  
5           the other part of this application as far as the  
6           change in profile. And so that's another whole  
7           thing here.

8                         CHAIRMAN BURCH: Thank you, Mr. Gajewski,  
9           for focusing us back on the process here.  
10          Miss Kelly?

11                        MS. KELLY: I have a question with respect  
12          to the shed and why it is recommended that it be  
13          turned. Is that just because that is the  
14          orientation of the old one length to width?

15                        MR. SLOAN: The orientation of the one  
16          previous was the end of it faced the road. So  
17          looking from the road you saw the gamble side of the  
18          roof.

19                        MS. KELLY: Because, frankly, if I had to  
20          pick how I would like it to be, I like that portion  
21          of the roof because as Bill says, it does bring it  
22          down to scale. I don't have a problem with the  
23          orientation but I sure do wish it was back on the  
24          pad where it was before.

25                        MR. GAJEWSKI: Mr. Chair, if I might make a

1 comment.

2 CHAIRMAN BURCH: Yes.

3 MR. GAJEWSKI: Just like Pat mentioned, as  
4 far as the orientation, actually storm water -- I  
5 think there's a swale along the roadway which would  
6 sort of direct it that way also.

7 MR. SLOAN: I guess the orientation is  
8 not -- I'm not as concerned about the orientation as  
9 I am the setback.

10 MR. GAJEWSKI: The setback as far as  
11 safety, that is not an issue as far as per -- I  
12 mean, as far as with the guidelines that the  
13 Washtenaw County, what they do is look at speed  
14 limit. Like on the gravel road it would be almost  
15 twice that. It would be -- on a 55-mile-per-hour  
16 road you'd have to have a 10-foot setback and it  
17 would have to be 630 and 610. In this case, it's  
18 390 and 335. So because of the speed limit it's  
19 less in there.

20 MS. KELLY: I would submit to Mr. Gajewski  
21 that if the Road Commission cleared it --  
22 notwithstanding, that's not a reason to allow a  
23 variance.

24 MR. GAJEWSKI: I didn't say that. I didn't  
25 say that.

1 CHAIRMAN BURCH: Well --

2 MR. GAJEWSKI: I'm sorry. Go ahead.

3 CHAIRMAN BURCH: In an effort to regain  
4 control of the meeting, Mr. Gajewski, you seem to  
5 be fairly astute on the issue of this shed.

6 MR. GAJEWSKI: Uh-huh.

7 CHAIRMAN BURCH: Would you consider  
8 presenting a motion to deal with the shed so that we  
9 can get beyond this and get to the meat of this  
10 variance request?

11 MR. GAJEWSKI: Yeah. I really don't have a  
12 big issue with the shed. As far as storm water  
13 mitigation, it's tucked under that twin oak tree and  
14 as far as safety it's not an issue there either.  
15 But if the Board feels it should be moved back and  
16 turned 90 degrees, that is their discretion.

17 I guess the other issue here is that the  
18 Applicant is -- well, he didn't feel he needs a  
19 variance as far as the change in profile. Now, I  
20 guess I want to ask so --

21 MS. KELLY: What change in profile?

22 MR. GAJEWSKI: The shed roof I guess on the  
23 back of the structure there was a low sloping shed  
24 roof that was raised to meet the 6/12 pitch of the  
25 home; is that correct?

1 MS. KELLY: On the house you're talking  
2 about. You changed the subject.

3 MR. GAJEWSKI: Okay. I was going to cover  
4 the whole thing.

5 CHAIRMAN BURCH: No, sir.

6 MR. GAJEWSKI: You don't want to go there.

7 CHAIRMAN BURCH: I want to deal with the  
8 shed before we start with the house.

9 MR. GAJEWSKI: Okay.

10 CHAIRMAN BURCH: Ms. Adams.

11 MS. ADAMS: In the photos dated July 17th,  
12 '07, the final one here, the sixth one, it shows  
13 some I believe construction in progress. And then  
14 is this the preexisting shed that was -- because the  
15 photo you had that you just showed us, wasn't there  
16 a shed that was side by side with this one?

17 MR. SLOAN: Yeah and that shed had been  
18 demolished. This shed here in the bottom right  
19 corner looks like a gray shed there in the  
20 background. That's a different shed. And at the  
21 time it appeared maybe it was there to store  
22 materials while this other one was built, since it  
23 was still being constructed. But do you know if  
24 that shed is still there?

25 MR. SHAY: The shed is still there.

1 MR. SLOAN: The little gray one?

2 MR. SHAY: Yeah. I have no idea --

3 obviously, it was there in 2007. I have no idea  
4 when it was constructed, whether permits, how old it  
5 is, nothing. I know that they purchased the  
6 property in 2000. I don't know if it was there at  
7 that point. And quite frankly, because it's tucked  
8 under the canopy of the trees, the aerial photos of  
9 the area would be of no assistance as to when it was  
10 there.

11 CHAIRMAN BURCH: May I suggest that that  
12 small shed may not even be on the property or  
13 applying to the Cross property.

14 MR. SHAY: That I don't know.

15 MS. ADAMS: There's a hand raised in the  
16 back here.

17 MR. CROSS: I'm Jeff Cross. I'm Dave's  
18 son. Just to try to shed some light on it, the  
19 small shed is one of those metal portable ones, and  
20 it goes wherever you want to take it.

21 MS. ADAMS: Okay.

22 MR. CROSS: There was never a concrete pad.  
23 I, unfortunately, did the brunt of the heavy lifting  
24 that is done out there. There was no cement. There  
25 may have been the little small blocks like was

1 suggested but there was no cement pad that was there  
2 or removed. So something may look like it was there  
3 but I assure you there wasn't.

4 CHAIRMAN BURCH: Thank you, Mr. Cross, for  
5 your insight, sir. Mr. Gajewski?

6 MR. GAJEWSKI: Mr. Chair, I mean, I can  
7 offer a motion as far as -- a positive motion as far  
8 as to allow the shed and if it dies, it dies and  
9 then the other motion can go the other way if that's  
10 how we want to do it or do we want to poll the Board  
11 and see what direction they want to go as far as  
12 moving that shed back to its original 90 or original  
13 location or --

14 MS. ADAMS: I've got a question for  
15 Patrick. The reason I'm a little uncomfortable  
16 about the location of the shed, and I understand the  
17 difficulty inherent in moving a shed and whatnot,  
18 but it's a concern that if say the Board were to  
19 vote in favor of allowing it to remain in place  
20 where it presently is, is that we'll run into  
21 problems down the road where other people try to  
22 come in and site sheds that close to the road. I'm  
23 not comfortable with it being that close to the  
24 road.

25 MR. SLOAN: That may happen. In this case,

1           you know, with hindsight being 20/20, I would have  
2           sent them right to the Zoning Board of Appeals if  
3           the record had any incompletions of this magnitude.  
4           And in the future, if anyone wants to site one or  
5           use this as a precedent it certainly wouldn't be, I  
6           don't think, because if the record's incomplete then  
7           they'll go straight to the Zoning Board of Appeals.

8                         And if they try to use five foot as a  
9           precedent, they wouldn't come to the Zoning Board of  
10          Appeals with any expectation of getting a five-foot  
11          setback. The zoning ordinance standard is what it  
12          is, and if they don't have any evidence that a shed  
13          had previously existed there, if we have some aerial  
14          photos. But I think the record, their starting  
15          point will be with the Zoning Board of Appeals. It  
16          wouldn't be a zoning permit based on an incomplete  
17          record.

18                        So I don't think it would be a viable  
19          argument to say that in this case a shed is five  
20          feet; therefore, everyone's entitled to five feet.  
21          That's my opinion.

22                        MS. ADAMS: Except to me it appears the  
23          record does show that the shed has moved forward,  
24          has moved more roadside.

25                        MR. SLOAN: Yeah. The appearance of it is

1           that it was and where the discrepancy is is how the  
2           plot plan scales and what is actually shown in the  
3           photos.

4                   MS. ADAMS: They don't show a scale on  
5           their plot plan though. I mean, it may appear to be  
6           close to the road but they don't give figures.

7                   MS. HERDA SPRAWKA: Numbers, no.

8                   MS. ADAMS: Numbers. So I don't see how  
9           you can really ascertain -- I don't see how they  
10          could take this and say that they had permission to  
11          build it five feet from the road. I think your  
12          verbal description is very clear where it should  
13          have been sighted.

14                   MR. SLOAN: And that's where I had given  
15          the Applicant the benefit of the doubt that 15 feet  
16          was not spelled out. 15 feet wasn't scaled and  
17          because of that gap to try to remedy that by  
18          mimicking the appearance and the location of the  
19          shed that we do have photos of.

20                   MR. SHAY: May I offer a suggestion?

21                   CHAIRMAN BURCH: You may, Mr. Shay.

22                   MR. SHAY: The way to handle this, because  
23          there were errors indicated here, and I have no  
24          doubt Mr. Sloan was just trying to help Mr. Cross  
25          with this problem that he had, you could move

1 forward on this issue and also contingent it upon  
2 the replacement or destruction of that shed that it  
3 had there that it could not be rebuilt in the same  
4 location so that it would be limited and it would  
5 remedy itself over time. That you could require  
6 that that shed not be restored if destroyed.

7 MS. KELLY: Our ordinance already requires  
8 that and it did when he built it where he built it.

9 MR. SHAY: But I will get to that further  
10 as far as the nonconforming lot.

11 MS. KELLY: No, what I'm saying is he was  
12 allowed to -- our ordinance is very generous in the  
13 lakes residential and other nonconforming districts  
14 with nonconforming structures, and any nonconforming  
15 structure no matter how nonconforming it is can be  
16 rebuilt exactly as it existed before.

17 That's the opportunity even though there  
18 was no proof that it did exist before that our  
19 zoning administrator gave Mr. Cross. And I don't  
20 think it's unreasonable to ask that he put it back  
21 where it was and we'll call it even on the size. I  
22 just -- I don't think that's unreasonable at all.

23 I'm not -- for the record, I don't think  
24 storm water management is an issue here at all.  
25 This isn't very close to the lake. Bill very

1           adequately pointed out very accurately that this lot  
2           doesn't have a storm water runoff problem. I mean,  
3           there's lots of canopy to take it, there's plenty of  
4           yard. I don't have an issue with storm water  
5           management. It is something we typically look at.

6                        But I do have an issue with it being that  
7           close to the road when it's clear from all evidence  
8           that I see here it wasn't that close before. And I  
9           think it's reasonable to scale it as much as we can,  
10          get it back off the road at least 15 foot if we  
11          can't agree on anything else and let it stay. And  
12          for the record, I don't have any issue with the  
13          other part but --

14                       CHAIRMAN BURCH: Miss Kelly, would you --

15                       MS. KELLY: That's why we're focusing on  
16          this.

17                       CHAIRMAN BURCH: Mrs. Kelly, since this is  
18          actually the secondary issue to the application  
19          would you consider putting that in the form of a  
20          motion so we can deal with this and move on?

21                       MS. KELLY: This in the form of a motion,  
22          what I just said?

23                       CHAIRMAN BURCH: Yes. Yes.

24                       MR. GAJEWSKI: I really didn't have a big  
25          issue because safety was the prime concern that was

1 pointed out and so I didn't have an issue because  
2 safety I didn't feel is a -- but I can make a  
3 positive motion and The Board can reject it and go  
4 backwards, however you want to work it.

5 MS. KELLY: I'll make a motion to approve  
6 a -- well, I don't know what setback we're  
7 approving. Do you know exactly how far back it was,  
8 Patrick? Can we scale that?

9 MR. SLOAN: The best evidence I had based  
10 on aerial photos and corresponding pictures from the  
11 assessing file it appeared it was about 15 feet from  
12 the right-of-way. That smaller shed that was in the  
13 picture, that shed that was in the March '06  
14 assessing file, it was about 15 feet.

15 MS. KELLY: Would you argue that point,  
16 Mr. Shay, based on the evidence in the file?

17 MR. SHAY: That it was about 15 feet? I  
18 have no idea where it's at. I know -- particularly,  
19 if you look at the photos, the shed appears to be at  
20 least 15 feet off the road. And I understand that a  
21 lot of people misconstrue roadway from road. So it  
22 could even have been that Mr. Cross measured out 15  
23 feet and put the shed where he thought it should be;  
24 however, that's not from the right-of-way.

25 I don't know exactly where the right-of-way

1 is without having a survey, and at this point I  
2 don't believe anyone can really ascertain the exact  
3 location of that shed. Since it's been there for  
4 two years and there's been no complaints by any of  
5 the neighbors, anything presented here, no one here  
6 is here tonight concerned about that shed, I would  
7 like this gentleman here to make the motion and  
8 let's move forward to the main issue.

9 MS. KELLY: Well, I can't make a motion if  
10 we don't agree on -- with all due respect to you,  
11 Mr. Shay, I'm not concerned if you agree, but if you  
12 don't know, if Patrick can give me a number I'm  
13 prepared to make a motion.

14 MR. SLOAN: Well, based on the aerial photo  
15 that I can measure it from, I can find a point on  
16 the center line of the road as it was in 2005 and I  
17 can find the edge of that shed as it stood there in  
18 2005, and from the center line of the road it  
19 measures about 48 feet.

20 So if we assume the center line of the road  
21 is in the middle of the right-of-way and with the  
22 33-foot half width that would put it at 15 feet from  
23 the road right-of-way i.e. 48 feet from the center  
24 line.

25 MS. KELLY: Okay. I'll make a motion to

1 allow a variance for this shed to be 15 foot from  
2 the road -- excuse me, 15 foot from the right-of-way  
3 noting that that is to the best of our ability where  
4 the old shed sat before it was demolished without a  
5 permit. Noting also that the new shed was  
6 essentially constructed also without a permit. And  
7 that the orientation of the shed -- I'm thinking  
8 this through as I go -- remain the same as current.

9 I'm done.

10 CHAIRMAN BURCH: Thank you.

11 MS. KELLY: I think we have a court  
12 recorder here to capture all of our comments. I  
13 think my final comments are adequately preserved on  
14 the record.

15 CHAIRMAN BURCH: Okay. As that was in the  
16 form of a motion, do we have support?

17 MS. ADAMS: I support.

18 CHAIRMAN BURCH: Ms. Jacoby, could I ask  
19 the court reporter to please read back the motion as  
20 it was made.

21 (Reporter read motion.)

22 CHAIRMAN BURCH: And that was the motion  
23 that was to be supported. Thank you, Ms. Jacoby.

24 Discussion? Mr. Gajewski?

25 MR. GAJEWSKI: I guess my concern is that

1 Mr. Shay states that this is a preexisting shed that  
2 a permit was issued for and therefore should be not  
3 rescinded. And I don't have a major problem with  
4 where the shed is at in its current location so is  
5 that opening us up to a lawsuit, per se, to ask  
6 Mr. Flintoft his take on this.

7 MR. FLINTOFT: This is a conforming lot and  
8 these are nonconforming buildings because of the  
9 setbacks.

10 MR. GAJEWSKI: Yes.

11 MR. FLINTOFT: And if it is not unusual in  
12 allowing the expansion of one nonconforming  
13 structure to require conformity to the ordinance,  
14 and if the ordinance would require that a building  
15 be moved back and The Board has to take up the  
16 question of moving back of an accessory building but  
17 you have to have a statement of reasons and evidence  
18 to support your findings that the nonconformity  
19 should be reduced. Okay? Because it's a balancing.

20 And I think your discussion has been going  
21 that way. Statement as to the clear vision, a  
22 statement as to the former location, a statement as  
23 to all these issues that you've raised, you simply  
24 have to formulate your statement of reasons.

25 MR. GAJEWSKI: But the clear vision is

1           okay.

2                       MR. FLINTOFT: I'm not disputing that.

3                       MR. GAJEWSKI: Okay.

4                       MR. FLINTOFT: I wouldn't want to. It's a  
5           discretionary permit. I don't believe that there's  
6           a cause of action for taking the property. Mr. Shay  
7           may disagree with me but, of course, he's come here  
8           asking for a variance for something else besides a  
9           shed.

10                      MS. KELLY: Do you have a question,  
11           Mr. Chair?

12                      CHAIRMAN BURCH: No. That was a formal  
13           request, I presume?

14                      MS. KELLY: It was indeed.

15                      CHAIRMAN BURCH: Okay. We have a motion on  
16           the floor and it's been supported. Again, in this  
17           case I'm going to ask for an individual vote.  
18           Ms. Adams.

19                      MS. ADAMS: Yes.

20                      CHAIRMAN BURCH: Ms. Adams votes yes.  
21           Ms. Herda Sprawka?

22                      MS. HERDA SPRAWKA: Yes.

23                      CHAIRMAN BURCH: Ms. Herda Sprawka votes  
24           yes. Mr. Gajewski?

25                      MR. GAJEWSKI: I'm going to say no.

1                   CHAIRMAN BURCH: Mr. Gajewski votes no.  
2                   Miss Kelly?

3                   MS. KELLY: Yes.

4                   CHAIRMAN BURCH: Miss Kelly votes yes, and  
5                   The Chair also will vote yes allowing the shed in  
6                   its present configuration provided it is moved back  
7                   to 15 feet from the right-of-way.

8                   Mr. Shay, would you like now to proceed  
9                   with the real reason that you're here this evening.

10                  MR. SHAY: I would love to. Thank you.  
11                  And I spelled out in the application and the  
12                  attachment pretty clear I think some of the higher  
13                  points that need to be stated here.

14                  This is a legal nonconforming lot, and  
15                  under the current setbacks of your current ordinance  
16                  this house is approximately from Township records 74  
17                  years old. It predates I think everyone in this  
18                  room. It certainly predates Mr. Cross's birth and  
19                  his wife's. This house when it was constructed on a  
20                  subdivision lot was conforming to all the  
21                  requirements that was platted and approved by the  
22                  state of Michigan, any local board, county.

23                  The house was constructed I believe prior  
24                  to any zoning requirements here. The current zoning  
25                  requires a setback from McGregor Road of a hundred

1 feet. The current setback from the water -- high  
2 water mark is 50 feet which means if you had to  
3 comply with the current Township ordinance, as the  
4 lot is only approximately 141 feet deep, there is  
5 nowhere on this parcel that you can build any  
6 structure, accessory building or a house, but for  
7 the fact that it is a legal nonconforming lot of  
8 record.

9 And under the current zoning even if it was  
10 a vacant lot today you could put restrictions on  
11 where on the lot it could be built but you could not  
12 restrict the use of that lot for a single-family  
13 dwelling. He has an absolute right under the  
14 ordinance to build on that lot.

15 In this case, Mr. Cross had an inspection  
16 by his insurance company which indicated that  
17 judging by the visual appearance of the roof some of  
18 the shingles were curling. It needed to be replaced  
19 otherwise they were going to drop the insurance on  
20 the home. He needed to replace it. He went and got  
21 what was called an instant permit from the Township.  
22 Nowhere on there is requiring anything from the  
23 Township that was issued. It's my understanding  
24 because of changes in your ordinance, that shouldn't  
25 have been granted.

1 MS. KELLY: That's not a Township permit,  
2 is it?

3 MR. SHAY: No.

4 MS. KELLY: Okay.

5 MR. SHAY: It's a building permit to  
6 replace the roof on the structure.

7 MS. KELLY: Okay.

8 MR. SHAY: And to all of my knowledge,  
9 Mr. Cross nor the Chelsea Area Construction  
10 Authority or Agency did not revoke the permit.

11 There was a request made in the letter from  
12 the Township but it was never acted upon. If they  
13 were to act on it they would be required to send  
14 notice to Mr. Cross.

15 I spoke with someone from the authority  
16 when I first got retained on here to find out how  
17 these were issued. They're routinely issued for  
18 re-roofing, for windows, siding replacement, things  
19 that are routine and usually doesn't require any  
20 type of inspection other than driving by the house.

21 Unfortunately, for Mr. Cross's case, when  
22 they were replacing the shingles on here they found  
23 a portion of the roof that was deteriorated  
24 underneath. Generally, roofs sometimes have weak  
25 spots. This area was in the back of the house, an

1 area 10 foot wide by four foot eight or so deep. It  
2 was a part of the enclosed porch.

3 I don't know the exact date that porch was  
4 enclosed and became part of the house. What he  
5 estimated was sometime in the fifties. That became  
6 part of the living space in the house. It was  
7 pretty much a flat roof -- I'm estimating here --  
8 was probably about a 2/12 pitch. Not very much of a  
9 pitch at all.

10 The problem -- and I can guarantee this  
11 isn't to scale -- but this is a diagram to show you  
12 basically what was there. In yellow was the  
13 existing roof. It had a transition point right  
14 here, and water usually comes down, settles here,  
15 leaves and debris. That deteriorates the roof.  
16 Usually not to the point that you're going to have  
17 problems inside the home but over time a little bit  
18 of water will rot out the members under the roof.

19 In this particular case, when they  
20 discovered that problem the contractor that was  
21 putting on the shingles said legally I can fix -- I  
22 can reshingle this because it's preexisting and it's  
23 grandfathered in; however, when I get in there and I  
24 have to replace the wood I have to bring it up to  
25 standard building codes. Kind of like when you

1 remodel a bathroom, you can't go buy a new toilet,  
2 you got to have a low water use. This is a  
3 requirement here.

4 There was no building code violation  
5 because the house was preexisting, but once you get  
6 into the work and you find a problem and you have to  
7 get into the structural members and raise it up,  
8 that becomes that you're required to repair that.  
9 Chelsea Building Department did not require an  
10 additional permit for that. They could have but  
11 they did not require that, and those type of things  
12 routinely happen, not only in Washtenaw County but  
13 in other counties.

14 What was suggested at that time was to  
15 eliminate a transition point because that's where  
16 roofs fail. The rest of the house is a 6/12 pitch.  
17 They increased it to 6/12. Granted this, is an area  
18 10 foot wide and it went up to the peak and just  
19 over and made that into 6/12 on this side to square  
20 off the house. It eliminated the transition point,  
21 it did not change the square footage of the space in  
22 the house.

23 CHAIRMAN BURCH: Miss Kelly?

24 MS. KELLY: May I? I don't want to the  
25 Crosses' kids to go back and report to their parents

1 that they didn't get their money's worth from you,  
2 Mr. Shay, but with your indulgence I'd like to offer  
3 a motion to approve this.

4 MR. SHAY: Thank you.

5 CHAIRMAN BURCH: I believe that it is  
6 fairly well described in the zoning application what  
7 we are requesting here and that the profile change  
8 is all we were really acknowledging.

9 MR. SHAY: That's it, and I don't believe,  
10 if you indulge me, that you even need to grant a  
11 variance. Under your ordinance, Section 1904, it  
12 says no structure may be enlarged or altered in the  
13 way that increases the nonconformity.

14 And what I would suggest to this Board is  
15 that there's no increase in the nonconformity.

16 MR. GAJEWSKI: Can I?

17 CHAIRMAN BURCH: Thank you, Mr. Gajewski.

18 MR. GAJEWSKI: Okay, yes. So I can  
19 understand preventing water intrusion, stachybotrys,  
20 black mold is a driving force in many building codes  
21 due to lawsuits, and in the south, the EIFS, the  
22 synthetic stucco has caused multi-million dollar  
23 lawsuits. So transitional changes in roof planes,  
24 changes in gable directions are not recommended as  
25 these are water intrusion weak spots. And so I can

1 understand where the Applicant's coming from in this  
2 issue.

3 The Applicant must seek a variance if the  
4 ZBA finds that the change in profile increases the  
5 structure's nonconformity. And so I do not feel  
6 that there's an increase in nonconformity.  
7 Webster's Dictionary defines profile as the  
8 side-view of the face. It's the sectional elevation  
9 of a building.

10 And if you look at our pictures again that  
11 Patrick put together, if you look at picture one and  
12 two and if you look at the profile or the face of  
13 the building, this is strictly a gable end view from  
14 McGregor Road. It's the side-view of the face that  
15 is the sectional view of that building, photo one  
16 and two. Therefore, by raising a relatively flat  
17 shed roof in this little small 10-by-5 foot area,  
18 whatever it is, by raising this relatively flat roof  
19 to match and continue the plane and profile of that  
20 roof is not an increase in nonconformity and should  
21 not require a variance.

22 I mean, I don't think we really should try  
23 to split hairs and be as restrictive as possible in  
24 our zoning ordinance interpretation. You know, this  
25 would decrease the ZBA work load. And profile has

1 not been changed.

2 CHAIRMAN BURCH: Thank you, Mr. Gajewski.  
3 Miss Kelly?

4 MR. SLOAN: If you don't mind the  
5 interruption. In the packet, there's some pictures  
6 there and from -- I don't want to go over the shed  
7 again but the pictures that were taken above the  
8 shed, it shows if you were standing at the road you  
9 can see the profile of the building. And you see  
10 there in the back where there's not that increase  
11 upward of the profile.

12 And in the recent pictures when you issued  
13 a stop work order for the roof, the area with the  
14 tarp over it is where that roof was raised. So if  
15 you're standing from the road, the before and after  
16 you can detect a change in the profile.

17 Historically, the way I looked at profile  
18 is you look at all sides of the structure. And what  
19 we're talking about is cubic footage. The cubic  
20 footage within the water side setback had increased.  
21 We don't have a cubic footage requirement in our  
22 ordinance. We have a lot coverage. But in terms of  
23 the roof going up, the cubic footage within that  
24 structure and the cubic footage of the building that  
25 takes place in that setback had increased.

1           Now, conversely, if previously the profile  
2           was higher and the Applicant went lower with the  
3           profile, that would also be a change in profile,  
4           albeit a more conforming change. It would be the  
5           change in the profile for a nonconforming structure.  
6           And under that interpretation even that would go to  
7           the Zoning Board of Appeals. I read a change in  
8           profile very narrowly one way or another. So that's  
9           where I'm coming from on that one.

10           CHAIRMAN BURCH: Thank you, Mr. Sloan.  
11           That was quite informative.

12           MS. KELLY: I support Mr. Gajewski's view  
13           on this. For reference for the Board, in 1904(B)  
14           the first paragraph asks us to decide if it's been  
15           enlarged or otherwise altered in any way which  
16           increases its nonconformity as it existed prior to  
17           being destroyed, repaired or renovated.

18           You kind of make that call, and we don't  
19           have a standard in the ordinance for profiles.

20           MR. GAJEWSKI: We don't.

21           MS. KELLY: And Patrick has, I think in  
22           this case as in others, applied this standard  
23           consistently across the board. He certainly has not  
24           singled out Mr. Cross. We have -- yours truly  
25           sitting here has received, sought and received a

1 variance for a four-by-four post on my property, and  
2 that was a change in profile.

3 We have taken steps to try and clear this  
4 up. I mean, Patrick felt under a strict  
5 interpretation that's what it was. I think under  
6 reading it and rereading it a million times, I think  
7 if you stop at the end of paragraph B it never takes  
8 you down to two which talks about a profile. And we  
9 don't have -- I mean, I think a case could be made  
10 either way and we're moving in a direction I think  
11 to clear up this language so that these kind of  
12 things don't happen.

13 I do want to point out for the record again  
14 we issue a zoning permit for every reroof, every  
15 replaced window. Everything that gets done on a  
16 house in our Township requires a zoning permit.  
17 Some require inspections, some do not. But they all  
18 require a permit, and Chelsea Area Construction  
19 Agency is extremely well aware of that fact, and if  
20 they issued this whatever you called it without one,  
21 they did it in error and I think Mr. Sloan was  
22 proper in writing them a letter.

23 MR. SHAY: I have no problem with that and  
24 I think I can speak on behalf of Mr. Cross that  
25 judging because I'm here tonight, I don't think he's

1 going to rake his leaves without knowing if there's  
2 a permit needed. He doesn't want to deal with this  
3 again. He wants things done properly.

4 MS. KELLY: I mean, I guess to be  
5 consistent, we are working at improving this  
6 language, but to be consistent with other rulings of  
7 this ZBA and other interpretations by other ZBAs and  
8 other previous zone administrators, I would like to  
9 offer a motion to approve a variance even though we  
10 may not agree a hundred percent on whether one is,  
11 in fact, required.

12 I think given all the history and the time  
13 we spent, you've gotten at least as much of \$400  
14 worth as anybody ever did.

15 CHAIRMAN BURCH: Thank you, Miss Kelly. We  
16 have a motion on the floor. Is there support?

17 MS. HERDA SPRAWKA: I would support that  
18 motion.

19 MS. KELLY: What was my motion?

20 CHAIRMAN BURCH: That we approve as  
21 requested.

22 MS. KELLY: Approve as requested for all  
23 the reasons stated on the record.

24 CHAIRMAN BURCH: Is there a further  
25 discussion? We have a motion on the floor to

1 approve Mr. Cross's variance request as written for  
2 all the reasons previously stated. Ms. Herda  
3 Sprawka?

4 MS. HERDA SPRAWKA: Yes.

5 CHAIRMAN BURCH: Ms. Herda Sprawka votes  
6 yes. Ms. Adams?

7 MS. ADAMS: Yes.

8 CHAIRMAN BURCH: Ms. Adams votes yes.  
9 Mr. Gajewski?

10 MR. GAJEWSKI: Yes.

11 CHAIRMAN BURCH: Mr. Gajewski votes yes.  
12 Miss Kelly?

13 MS. KELLY: Yes.

14 CHAIRMAN BURCH: Miss Kelly votes yes. The  
15 Chair emphatically votes yes. It is granted.

16 MR. SHAY: Thank you.

17 CHAIRMAN BURCH: The Chair is going to  
18 declare a five-minute recess for a water break for  
19 the Board members.

20 (A brief recess was taken.)

21 CHAIRMAN BURCH: We call the Township  
22 Zoning Board of Appeals meeting back to order.  
23 Dealing with agenda item No. 3 this evening,  
24 09-ZBA-706, Chris and Mary Seitz, 7473 Noah's  
25 Landing. And again, we have a very extensive list

1 of persons noticed for this request. At the  
2 discretion of The Chair, I shall dispense with the  
3 reading of this list.

4 Mr. Sloan I'm sure will be rejoining us  
5 shortly here. I'll ask him to present this appeal.

6 Mr. Sloan, could you please present for the  
7 board 09 ZBA 706.

8 MR. SLOAN: Yeah. The purpose of this  
9 request is to allow for the expansion of an attached  
10 uncovered deck to the existing home at 7473 Noah's  
11 Landing. Going back a few years, on June 8th, 2004  
12 the Zoning Board of Appeals approved a variance  
13 request for the Seitz to rebuild a single-family  
14 home.

15 Included with that approval was a 15-foot  
16 by 32-foot deck on the water side. A zoning permit  
17 was approved for the work on July 6th, 2004. On the  
18 approved plans, a floor is shown on the south side  
19 of the house that is two feet above grade, roughly  
20 two feet above grade. Although this implies that  
21 access steps would likely be constructed at some  
22 point, there was no explicit approval of steps or a  
23 deck from the door on the approved plans or anywhere  
24 on the ZBA record that I could find; however, the  
25 pictures of the final inspection, 04-ZP-4164, which

1 are enclosed, show a four-foot by eight-foot deck  
2 from this south side door with access steps going  
3 downward in a southeasterly direction i.e. toward  
4 the road.

5 The quote, unquote, previous deck, as it is  
6 described in the Applicant's plans, was recently  
7 demolished and replaced with a six-foot by 24-foot  
8 deck that extends westerly to connect the existing  
9 deck that was approved by the ZBA in 2004 on the  
10 water side. Both the previous deck, which was built  
11 without a zoning permit or a variance in 2004, and  
12 the current deck, which was built without a zoning  
13 permit or variance in 2008, encroached into the  
14 required side yard setback on the south side, and  
15 the current deck encroaches into the water side  
16 setback on the west side.

17 According to the Applicants, they  
18 demolished the previous deck because it was  
19 constructed with defective materials and the  
20 neighbor to the south had constructed a fence that  
21 deterred access to the water side of the lot. The  
22 pictures will reflect that.

23 On July 31st, 2008, Dexter Township issued  
24 a zoning variance letter to the Seitzes. Also,  
25 Dexter Township recently issued a zoning violation

1 letter to the property owner to the south since the  
2 fence was constructed without a zoning permit and it  
3 exceeded the maximum allowable height requirement in  
4 effect at the time the fence was built.

5 The fence to the south was built by the  
6 previous owner of that property to the south. So  
7 the current owner of the property to the south are  
8 not the people that built the fence. It was the  
9 previous owner. We had talked to the previous owner  
10 about that fence back in the summer of 2007 and he  
11 said he had built the fence sometime I think in  
12 2004. In late 2004, we had changed our fence  
13 regulations.

14 As it turns out, I don't think the fence  
15 regulation zoning amendment that took place in 2004  
16 would have substantially changed how we would have  
17 approved fences from before and as it relates to  
18 this property but nonetheless I didn't have anything  
19 in the record that would conclude which zoning  
20 standard to apply to that fence.

21 So we kind of put the zoning violation on  
22 the back burner for the time being until we could  
23 reconcile how we would handle that violation given  
24 the incompleteness of the record.

25 When the Seitz's variance request came up

1           there were pictures in the file that -- the pictures  
2           that you have are dated 5-24-05 from disc 05-099VH  
3           numbers 12 through 16. This was typed in in a Word  
4           document. And with the snow on the ground, there  
5           was a discrepancy there that was called to our  
6           attention from the neighbor to the south. So we did  
7           some investigating with some of the photos we had on  
8           file because ultimately the fence is a peripheral  
9           issue here with regard to the deck, but to get the  
10          succession of events correct we had to go back to  
11          the record and figure out when these pictures were  
12          actually taken.

13                         And we did that, and in the file of the  
14          Seitz's there's a record here on February 24th, 2005  
15          where the zoning inspector, Bart Hamilton, wrote:  
16          Partial final 04-ZP-4164 because of weather, no rain  
17          garden or final grading photos. And then writes  
18          photos disc 05-095BH numbers 12, 13, 14, 15 and 16.  
19          So on the pictures that we have, the photo date is  
20          incorrect. We have in the file on 2-24-05 he was  
21          actually out there to take the pictures.

22                         I haven't looked deeper into the record as  
23          to why we did a partial final. My assumption is  
24          they wanted a certificate of occupancy and the  
25          weather wasn't right to construct the rain garden,

1 so we went ahead with that. It's fairly normal. We  
2 usually do that when we finish up in the winter. We  
3 went back to the disc, we pulled that and looked at  
4 the properties of the files themselves for those  
5 pictures, and when we right click and bring up the  
6 property it says modified Thursday, February 24,  
7 2005 which is basically a digital footprint of when  
8 those pictures were taken.

9 Technologically, there might be some way to  
10 predate those, but if there is I'm not aware of a  
11 way. So based on what Bart attested to in the  
12 record and what comes up on the property with the  
13 photos, I'm inclined to assume that these photos  
14 that he took, 12 through 16, match the exact photos  
15 on that disc. And the disc says they were taken on  
16 2-24-05. All this proves is that the first picture  
17 in the top left-hand corner there is no fence  
18 between the two properties, which proves that that  
19 fence was constructed after 2-24-05 which is after  
20 the time we amended the zoning ordinance. In other  
21 words, the fence that's there now is subject to  
22 zoning regulation regarding fences in 1818 I believe  
23 F of the zoning ordinance as it exists today, which  
24 reduces the height of fences in the Lakes  
25 Residential District to three feet -- or not reduces

1           them but limits them to three feet high and has  
2           restrictions as far as how far towards the lake they  
3           can go.

4                       So the succession here is that on 2-24-05 a  
5           picture's taken with no fence and there's access  
6           steps from the door. Sometime after that the  
7           neighbor there built the fence, and according to the  
8           Applicants had restricted access to the back of the  
9           property. And you'll see in the pictures that we  
10          took of the deck violation that it would have  
11          impaired it some.

12                      So in reaction to that, the Applicants  
13          demolished the deck in addition to the fact that it  
14          apparently had defective building materials and they  
15          just built another deck, connected it to the water  
16          side deck. So they built the deck, the fence was  
17          built in response to that and the defective  
18          materials. They built a deck to the back towards  
19          the water side. And I'm sure the Applicant will  
20          want to speak to that in more detail but I'm kind of  
21          giving you an example of the succession of events  
22          and how it all kind of unfolded based on the record  
23          that we have.

24                      So with that, I don't think I have anything  
25          else to add so I'll pass it over to the ZBA.

1                   CHAIRMAN BURCH: Thank you, Mr. Sloan.

2                   MR. SEITZ: Hi, I'm Chris Seitz. Again, we  
3 had some issues with our polymer deck so we started  
4 to repair it. Unfortunately, we got to -- we said,  
5 oh, well, let's connect it here and it got a little  
6 bit bigger and we apologize for that. We should  
7 have gotten a permit for that.

8                   You know, the fence was there. I don't  
9 know when it was put up. I feel bad because we all  
10 get along very well and unfortunately now I've got  
11 my neighbor who we get along great and, you know,  
12 he's tied into this now and I feel -- I apologize  
13 for that. So but, you know, again, we modified the  
14 deck. That's our front door so, you know, we have  
15 to have a way obviously into our house. But when we  
16 changed some of the bottom boards out with the bad  
17 polymer we extended it to connect it to our front  
18 deck which is already there because we couldn't get  
19 around and the fence was in the way. So we modified  
20 it and we shouldn't have.

21                   I don't have any attorneys or anything like  
22 that. I'm just saying that's the way it is. I  
23 mean, if I would have known I could have brought  
24 some. I don't want to take up a lot of time. I'm  
25 not going to say God Bless America either. I'm

1           sorry.

2                       MR. MITCHELL: Patrick, just for the  
3 record, when you were stating about the front deck  
4 that they have -- I'm John Mitchell, I'm a neighbor  
5 -- did I not hear you correctly that you said the  
6 front deck was constructed without a permit?

7                       MR. SLOAN: The deck on the water side was  
8 approved in 2004 as part of the variance. I  
9 couldn't find anywhere in the record the steps on  
10 the south side that go -- the landing that was  
11 previously there with the decks -- with the steps  
12 going down to grade. I couldn't find any record of  
13 that landing and steps being approved in 2004.

14                      MR. SEITZ: Okay. That's our front door,  
15 so obviously we got to get up to our front door.

16                      CHAIRMAN BURCH: Excuse me, Mr. Seitz.  
17 Could I have your name and address for the record?

18                      MR. MITCHELL: John W. Mitchell the Second,  
19 7447 --

20                      CHAIRMAN BURCH: Thank you.

21                      MR. MITCHELL: -- Noah's Landing.

22                      MR. SEITZ: Like I said, I have no qualms  
23 about the fence either, honestly. Because that's  
24 our front door. When our lights go on, just to go  
25 up the steps, you know, it was shining in their

1 window. I assume because their bedroom window's on  
2 that side. So I didn't have a problem with that at  
3 all. It made things a little harder to get around  
4 from where we were but, you know, again, I have no  
5 problem with the fence.

6 CHAIRMAN BURCH: Thank you, Mr. Seitz.  
7 Members of the Board?

8 MR. SLOAN: If I could just interject  
9 regarding the fence. The neighbor to the south, I'm  
10 still working with the neighbor and I had promised  
11 him some materials. I was going to write out a  
12 response mostly of what I had just discussed. So  
13 we're still going through the enforcement process  
14 for the fence. There's nothing in front of the ZBA  
15 tonight to pass any kind of judgment on the fence  
16 one way or another. We're still working  
17 administratively. There may be something in the  
18 future but you can see from the application how  
19 they're somewhat related.

20 CHAIRMAN BURCH: Thank you, Mr. Sloan.

21 MR. SENSOLI: I'm Anthony Sensoli. I'm the  
22 neighbor to the south, and I'd like to say that I  
23 guess this would impact me the most and that I have  
24 no qualms with the deck. I think it's fine. And I  
25 had no complaint with it and so I'm glad to let you

1 know that I'm okay with it.

2 CHAIRMAN BURCH: Thank you, Mr. Sensoli.

3 MR. SENSOLI: The only thing I would add is  
4 because Patrick took a long time talking about the  
5 fence, and the whole story was I think that -- I  
6 asked him to send me what picture he had that was --  
7 they knew about this for a couple of years and what  
8 evidence he had that he was basing this on that the  
9 fence wasn't built when the previous owner said he  
10 built it.

11 He sent me a picture from May 24, 2005,  
12 like he said, with snow on the ground and a bare  
13 tree. So I think even had I known about that fence  
14 then and I went and looked. If somebody said it  
15 might be a problem, I went and looked at the book,  
16 that's my birthday. I know there's not snow on the  
17 ground. I asked Mr. Sloan to please stop, and so  
18 if you did something that's in the public record  
19 that's wrong to please stop this enforcement. So I  
20 hope not to have to come in front of you again. And  
21 I hope Mr. Sloan would respect that request.

22 MS. KELLY: May I?

23 CHAIRMAN BURCH: Miss Kelly.

24 MS. KELLY: You're asking Mr. Sloan not to  
25 enforce this obvious violation of an ordinance?

1 MR. SENSOLI: I'm not sure it's an obvious  
2 violation because the homeowner said he built it in  
3 2004. This has come up a couple of years ago. He  
4 said it would be fine. He somehow said he assumes  
5 based on some other documents that the picture -- if  
6 you look at that picture it says photo taken May 24,  
7 2005. That's the only evidence that I could go by.  
8 I looked at that, I asked him to send the picture,  
9 he sent the picture. The picture obviously is  
10 wrong.

11 So based on the fact that the picture is  
12 wrong, I don't know what other kind of evidence, you  
13 know, that he can come up with on this that -- how  
14 can I trust that anything else he does is right  
15 because what he's based the whole problem on was  
16 wrong. Based on that, I would ask him to stop  
17 because he has the word of the previous homeowner,  
18 he has wrong evidence and I would ask him to stop  
19 proceeding forward.

20 MS. KELLY: May I respond?

21 CHAIRMAN BURCH: Miss Kelly.

22 MS. KELLY: Mr. Hamilton who is the zoning  
23 ordinance officer at the Township here keeps very  
24 explicit records. If you go back for his entire  
25 employment he has little black books that he keeps

1 just excruciatingly highly-detailed records.

2 And I'm guessing if you go back you're  
3 going to find that the only thing wrong in all of  
4 this is that somebody typed the wrong date on this.  
5 He did, in fact, as is clear from the snow, go out  
6 in February, as now upon further investigation  
7 Mr. Sloan has found. But regardless of when the  
8 pictures were taken, that house hasn't been there --  
9 that fence was always illegal. If you go back to  
10 the 1961 ordinance, if you go to the 1973 ordinance  
11 or the 2003 ordinance, that fence did not have a  
12 permit and would not have been allowed without a  
13 variance.

14 And I'm not sure if you know that but --

15 MR. SENSOLI: Mr. Sloan told me it was fine  
16 until the change order in 2005. And he wanted to  
17 predate the fence because if the fence was done  
18 before 2005 it would have been okay. I don't know.

19 MS. KELLY: Well --

20 MR. SLOAN: No, it would have been under  
21 slightly different zoning rules. We did regulate  
22 fences. As late as May 1st, 2003 when we adopted  
23 the ordinance there were fence regulations there.  
24 And I believe in late 2004 those regulations were  
25 amended. The issue for me wasn't whether or not

1           there was a violation. The issue was which  
2           ordinance is applied at the time it was built, and  
3           it may have been even questionable whether or not we  
4           treat it under the ordinance before it was amended  
5           but I did want to narrow down the time when the  
6           fence was built so I could get an understanding of  
7           what the regulation was at the time it happened.

8                   MS. KELLY: Although if there was no  
9           permit, in my view the regulation that applies is  
10          the one that's in effect on the day you discover  
11          something that didn't have a permit. But be that as  
12          it may, we're getting off task here. Sorry.

13                   CHAIRMAN BURCH: I'm going to bring us back  
14          to the case of 7473 Noah's Landing and the deck.  
15          Members of the Board, Miss Kelly.

16                   MS. KELLY: I guess one of the reasons I  
17          transgressed is, honestly -- well, I don't think we  
18          can allow what's sitting there now, at least from  
19          what I see in that picture. I mean, I don't know.  
20          I don't know how a fireman gets through there.

21                   MR. SEITZ: It's a lot easier, honestly,  
22          because it's wider. Otherwise they only have this  
23          much space to get through.

24                   MS. KELLY: But to have something that  
25          burns contiguous. I mean, what you've created -- it

1 just -- I'm pretty sure without asking, but I think  
2 we could ask, if a fireman thought that was okay and  
3 I'm pretty sure they would not say --

4 MR. SEITZ: We can show before and after  
5 because I know they'd go with the after.

6 MS. KELLY: But regardless, it's hard for  
7 me to imagine, you know, trying to rule on this one  
8 way or the other. I mean, I will concede clearly  
9 you need a way to get out of your house. It was an  
10 oversight on the part of the ZBA apparently when you  
11 got permission to build your house and got your ZBA  
12 permit or variance and permits that that wasn't  
13 recognized, and there wasn't a specific variance  
14 granted for it. There should have been.

15 But I don't dispute you need one. But I  
16 don't know that it needs to connect with the front  
17 deck. I don't know that it needs to be abutting  
18 right up to that fence. I think if you come in  
19 there fence or no fence and ask for that, there's no  
20 way I can see that I would have voted to approve  
21 that just because it's so close.

22 MR. SEITZ: But again, we did it for safety  
23 reasons because of the width.

24 MR. MITCHELL: It's really, really --

25 MR. SEITZ: If you don't have that then you

1           only have this much room to slide through, and that  
2           was worse actually.

3                       MS. KELLY: I understand, but you take the  
4           fence out of there and it changes the dynamic. And  
5           so to me whether we want them to be related or not,  
6           they are.

7                       MR. MITCHELL: Miss Kelly, may I ask a  
8           question?

9                       CHAIRMAN BURCH: Sure.

10                      MR. MITCHELL: Patrick, with all due  
11           respect, with the new ordinances that are from 2004  
12           to 2005, is that correct, when we changed these? Am  
13           I getting that right?

14                      MR. SLOAN: I believe the amendment to the  
15           fence regulations was in late 2004. We had the  
16           zoning ordinance which was adopted May 1st, 2003.  
17           And in that ordinance I believe the height  
18           restriction on a waterfront lot was still three feet  
19           high for a fence.

20                      MR. MITCHELL: Total height.

21                      MR. SLOAN: Total height from grade for a  
22           waterfront lot.

23                      MR. MITCHELL: Thank you.

24                      MR. SLOAN: There were some restrictions  
25           that were added. I believe that amendment that took

1 place in 2004 restricted the distance in which it  
2 could go towards the lake. But I don't think the  
3 height for a waterfront fence had ever changed.

4 MR. MITCHELL: Okay.

5 MR. SEITZ: The reason for that is to  
6 protect the neighbors, right. If they can't -- if  
7 it ruins their view of the lake or something like  
8 that, right? And if the neighbors don't have any  
9 problems with it, I'm not sure what the --

10 MS. HERDA SPRAWKA: You won't always be the  
11 same neighbors, will you.

12 MR. SEITZ: That's true. Again, the fence  
13 is there so --

14 MS. HERDA SPRAWKA: Can I ask Mr. Sensoli a  
15 question? Why do you find you need this fence?

16 MR. SENSOLI: Well, obviously, that fence  
17 was built before I moved in there.

18 MS. HERDA SPRAWKA: You haven't removed it.

19 MR. SENSOLI: So I've not moved it. It's  
20 all kind of new to me. I think what the fence adds  
21 is some privacy. That it's an unusual setup where  
22 the Seitz's front door is on the side of the house.  
23 It's not on the front. And looks right into the  
24 master bathroom and bedroom and it's 10 feet from  
25 the front door.

1           So I think it adds a some nice privacy to  
2 things. It's a weird setup that got approved but  
3 since it's been approved I think having the fence  
4 there makes a lot of sense.

5           MS. HERDA SPRAWKA: And I'm sorry, the  
6 bedroom bathroom is right off the entrance. Your  
7 bedroom bathroom, they would be looking --

8           MR. SENSOLI: Right, looking right into the  
9 windows. So I think that's why the previous owner  
10 put the fence up. If the fence was three feet tall  
11 it would still have the --

12          MR. MITCHELL: You could see right in the  
13 windows.

14          MR. SENSOLI: We don't have a problem with  
15 that. The Board knew about the fence before and it  
16 was okay, and to me there's not a problem with it  
17 that way right now.

18          MS. KELLY: The Board didn't know about  
19 that fence.

20          MR. SENSOLI: Mr. Sloan's letter said they  
21 did know about it. He wrote that to me. He said  
22 they knew about it and he took the previous  
23 homeowner's word it was built in 2004.

24          MR. SLOAN: The homeowner had -- let me go  
25 back to the letter.

1 MR. SEITZ: The letter. You can read that  
2 letter.

3 MR. SLOAN: I had a conversation with the  
4 previous owner, Gary Hanes, and he had said that his  
5 fence was built before June 2004 and what we didn't  
6 have was the date the fence was actually built.  
7 What I have in my note was before June 2004.

8 So I don't know if it was before May 1st of  
9 2003 when the new ordinance was in effect. And I  
10 didn't feel comfortable pursuing a violation where I  
11 didn't have all the evidence of pinning down when a  
12 fence was constructed. And if possibly a fence had  
13 been there before and based on when Gary Hanes had  
14 rebuilt his house and when the Seitzes had rebuilt  
15 theirs, there were some final zoning inspection  
16 pictures that revealed that no fence had existed at  
17 that time. No fence had been replaced.

18 And at that point I felt the record was  
19 complete enough to continue with that violation.

20 MR. SENSOLI: When did you talk to  
21 Mr. Hanes?

22 MR. SLOAN: May 9th of 2007.

23 MR. SENSOLI: So what was added new to the  
24 file? Those pictures were from 2005. What  
25 evidence, what new evidence was added since you

1 talked to the person that put the fence up that  
2 would make you want to enforce the thing now? I'm  
3 not sure what changed. The same evidence should  
4 have been in there.

5 MR. SLOAN: In terms of new evidence,  
6 there was nothing new that happened.

7 MR. SENSOLI: There's no new evidence that  
8 you had.

9 MR. SLOAN: Well, in terms of new evidence  
10 that took place after May 9th, 2007, but there was  
11 new evidence discovered in the neighboring property  
12 file that just so happened to have pictures taken  
13 after when he said the fence was built, according to  
14 my notes. And based on those photos, it did not  
15 match with the information that I was given the year  
16 before.

17 So I would assume go by the photographic  
18 evidence of what was existing in 2005, and the proof  
19 in the pictures was that there was no fence there.

20 MR. SENSOLI: Wasn't that available to you  
21 when you talked to Mr. Hanes? Wasn't that file  
22 available? And the picture is wrong. Unless  
23 there's snow on the ground on May 24th, the picture  
24 was wrong. So maybe you looked at it then and said  
25 this picture is bad. I don't know what's changed.

1 I guess that's the whole thing. You had the chance  
2 to talk to the person and remedy it with the person  
3 who put the fence up there and lived there and you  
4 chose not to do it.

5 MR. SLOAN: Well, to your first point of  
6 evidence in another file, there could be evidence on  
7 a number of violations that could exist in other  
8 files and our files we have hundreds, maybe  
9 thousands of property files. They have pictures in  
10 them, they have letters, some of them going as far  
11 back as the 1970s. So our record is substantial.

12 In terms of narrowing down the information  
13 that we have and getting the right information that  
14 shows a certain area at a certain point in time, it  
15 could be in the files somewhere and we just don't  
16 know where to look for it.

17 And if we come upon it at a certain point  
18 in time where we have evidence that something either  
19 did or didn't exist and we had a previous violation  
20 for it, then we have a responsibility to act.

21 In terms of the second point of the date of  
22 the pictures, the error that occurred on the  
23 pictures, based on further investigation, was an  
24 error inputting the date.

25 MR. SENSOLI: That's your conclusion.

1 MR. SLOAN: Yep. My conclusion is that the  
2 date where in Word the person input 05-24-05 instead  
3 of 2-24-05. There could have been one of two things  
4 that happened. Number one, it could have been a  
5 typo and he intended to hit the 2 instead of the 5  
6 in terms of a month.

7 The second thing that could have happened  
8 on 5-24-05 Mr. Hamilton was at the property to  
9 inspect the rain gardens and he finalized it on that  
10 date and he noted on the file there was no photos.  
11 So either that's the date that reflected the final  
12 inspection once the rain garden was in or it was the  
13 typo based on 2-24-05.

14 But when I looked into the disc itself to  
15 find out what date it has on the property portion of  
16 that picture file for those six pictures it said  
17 Thursday, February 24th, 2005 at 11:02 a.m. So  
18 based on Mr. Hamilton's writing in the record, based  
19 on examination of the disc, I concluded that that  
20 picture was taken on February 24th, 2005 and that  
21 this date written here was either a typo or was  
22 there to reflect the date that it was final.

23 I assume that if it says photo date then  
24 there was probably a discrepancy in the file in  
25 terms of the date he did the partial final so they

1           could get their C of O, and the last final in which  
2           all he had to do was inspect the rain garden.

3                   CHAIRMAN BURCH: Mr. Sloan, I'm going to  
4           try to pull this back to the reason that we are  
5           discussing this -- the deck. I want to get away  
6           from this fence issue. That is not relevant this  
7           evening.

8                   MS. KELLY: I respectfully disagree a  
9           little bit. But I just have some comments as to  
10          both. I mean, regardless of the date on the top of  
11          this, I think we can all agree that this is the  
12          Seitz's new house. This is the Hanes' new house.  
13          This picture was probably taken in the winter  
14          because there's snow on the ground, and there's no  
15          fence there.

16                   The other thing we know for sure is that  
17          the Seitzes built their house after the Hanes' house  
18          was built. So if this is a final inspection, which  
19          I think is fairly indisputable, we don't go out and  
20          randomly take pictures on Noah's Landing, it was  
21          done for a final inspection. So after the final  
22          inspection on the Hanes home and as the final  
23          inspection was being done on the Seitz home there is  
24          no fence there.

25                   I think it's pretty indisputable that the

1 fence was built afterwards. There's no evidence in  
2 the record that there was a permit for it or there  
3 would have been some evidence in the property file  
4 for your property. We wouldn't have had to by  
5 chance find it in a neighboring property file when  
6 we were looking at it for some other reason. So it  
7 really doesn't matter to me what date it says on  
8 this picture. I think it's pretty indisputable it  
9 proves that the fence wasn't there.

10 I guess the other item I really want to  
11 make clear here is the Zoning Board of Appeals and  
12 the Zoning administrator for that matter look at  
13 plans with respect to the ordinance. The Zoning  
14 Board of Appeals in particular looks at setback  
15 issues and dimensional things, among others, but we  
16 don't have a review box or a check box that says  
17 somebody put -- designed a house to put a door  
18 across from somebody's bedroom. You know, these are  
19 brand new nearly a million dollar homes and I would  
20 have thought an architect would have figured out  
21 that this was going to be a problem. I reject the  
22 notion that it was somehow the ZBA's or this  
23 Township's fault that these were poorly designed.  
24 And I don't feel compelled to grant a variance to  
25 anybody for a mistake -- what I view as a mistake.

1           And I'll grant you, and I said a few  
2 minutes ago you need to get out of your house. And  
3 I guess to your problem, Mr. Seitz, I'm willing to  
4 give you the bare minimum to get out of your house.  
5 It's a problem. That wasn't approved. And,  
6 frankly, if there was a mistake made by Mr. Hamilton  
7 it was in doing this final inspection not in  
8 compliance with the variance that was applied for  
9 and received.

10           MR. MITCHELL: For the door you're saying  
11 then.

12           MS. KELLY: That deck does not have a  
13 variance, not the old one or the new one.

14           MR. MITCHELL: I know that's not what I  
15 think we're arguing on. Possibly getting in and out  
16 of a house.

17           MS. KELLY: Exactly. And we would have --  
18 but I guess to my point, it isn't our problem to  
19 worry about that. We're worried about dimensional  
20 issues. When we catch those things we certainly  
21 bring them forward. But I'm willing to say okay,  
22 that wasn't good but --

23           MR. SEITZ: By the way, I do know that  
24 there was a fence in that location through the  
25 seventies and eighties, just so you know.

1 MS. KELLY: Well, there was a natural --  
2 that was one of the most beautifully treed and  
3 wooded lots on all of north lakes before Mr. Hanes  
4 built his house.

5 MR. SENSOLI: That's true.

6 MR. MITCHELL: We can't go there.

7 MS. KELLY: We're not proud of that  
8 variance either. It was the very first one granted  
9 under the new ordinance.

10 MR. SEITZ: I understand that.

11 MS. HERDA SPRAWKA: Now, just to comment.  
12 I'm assuming this is from your application,  
13 Mr. Seitz, and you say the original deck was made  
14 with defective product and was in need of repair.  
15 The deck was constructed when the house was built  
16 and there was not a fence along the property line.  
17 You say that.

18 MR. SEITZ: I didn't write it but --

19 MS. HERDA SPRAWKA: The fence was built  
20 approximately a year later by the neighbor for  
21 reasons that we're not aware of. This is from your  
22 application.

23 MR. SEITZ: I didn't write it. My wife  
24 did.

25 MS. HERDA SPRAWKA: Sorry.

1 MR. SEITZ: She had to put the kids to bed  
2 so I think that's fair. I don't know.

3 MS. KELLY: But to bring us back to task,  
4 you know, the ZBA isn't going to solve this issue.  
5 I mean, you have some issues. And I think you both  
6 have issues, you both need to be in front of this  
7 body.

8 And what I'd like to see is again, that we  
9 not design your solution, that you come up with a  
10 solution and if it requires a variance that then  
11 we'll rule on it. But I don't know how we can rule  
12 on either of them. They're both violations, they  
13 both need to be dealt with. I don't want to design  
14 your solution.

15 MR. SEITZ: So you don't like it the way it  
16 is, obviously, even though we do. But you're -- any  
17 ideas of what -- I mean, we're struggling with  
18 obviously he doesn't want light in his windows. We  
19 have to get out of our house.

20 MS. KELLY: You put a shade on the inside  
21 and you take care of that. I mean, you can -- I'm  
22 not suggesting it's the best solution.

23 MR. SEITZ: True. But on the lake you want  
24 to have your windows open.

25 MR. MITCHELL: Five-foot fence would not

1 cover --

2 MS. KELLY: There's definitely a fire  
3 safety issue here. I would suggest there happens to  
4 be a fire inspector that works on your lake.

5 MR. SEITZ: I'm sure I could get one if  
6 that helps. Is there some other things that we  
7 should provide to you because obviously we want to  
8 accommodate as best we can what our needs are and  
9 what your needs are.

10 MS. HERDA SPRAWKA: It seems to me that  
11 previous deck, previous steps that you had is more  
12 in line with something we'd probably like to see  
13 rather than something that would go and extend the  
14 variances toward the lake as well, correct? Am I --

15 MS. KELLY: That's certainly right.

16 MS. HERDA SPRAWKA: I noticed that the  
17 steps in the older picture kind of turn to the side.  
18 Is it possible to make them maybe go a little  
19 straighter out. That will give you an even bigger  
20 area to walk and pass through. Just a suggestion.  
21 I don't know. I think something more in line with  
22 what you had is probably -- something that minimizes  
23 the amount of variance that would occur would  
24 probably be most helpful.

25 MR. SEITZ: Again, though I just have a

1 width issue because I have -- I'll only have this  
2 much room and I have a safety issue where I can't  
3 get through very well. You go up the stairs, you  
4 get in the door no problem, but I can't go towards  
5 the lake.

6 MS. HERDA SPRAWKA: Right.

7 MR. SEITZ: So I guess I could put stairs  
8 down the other way to do it, but we thought --

9 MS. HERDA SPRAWKA: Well, part of the  
10 problem here too is the way in this new picture  
11 where you have the deck going, you have more of a  
12 width that way too. It's wider going out the door  
13 now than it used to be. So that cuts off some of  
14 your area to pass through as well.

15 MR. SEITZ: It actually adds area to pass  
16 through.

17 MS. HERDA SPRAWKA: If you go up the  
18 stairs. But I meant on the ground level it narrows  
19 it up quite a bit.

20 MS. ADAMS: And you say you put this in  
21 partly because when the fence went up then you  
22 needed easier access, so maybe --

23 MS. KELLY: This picture says everything.  
24 I mean, you could tell exactly what happened and  
25 almost in what order without any narrative. And I

1           guess I would just ask that you go away and put your  
2           best thinking caps on, understanding that fire  
3           safety is a huge issue.

4                       We have a requirement for any standard of  
5           review for a variance that it be the minimum  
6           required for reasonable use and that you focus on  
7           those and come back with something that makes sense  
8           to you.

9                       CHAIRMAN BURCH: Does the floor want to  
10          entertain a motion deferring the consideration of  
11          this to a future date?

12                      MS. KELLY: I'll move to defer  
13          consideration on this pending receipt of a variance  
14          request by Mr. Sensoli for his fence or something,  
15          and I guess I would like to put a date certain on it  
16          no later than our April meeting if you can have some  
17          ideas.

18                      MR. SENSOLI: So could I clarify it? So a  
19          three-foot fence would be allowed now.

20                      MR. SLOAN: The permitted fence height on  
21          the lake front property is three feet.

22                      MR. SENSOLI: So we can come back with  
23          something, what is the intent of that?

24                      MR. SLOAN: My personal point of view, I  
25          wasn't here when it was written so I don't know what

1 the discussion entailed -- but my point of view  
2 coming in after the ordinance was adopted and  
3 reading the regulation, I think it has to do with  
4 the view of the lake, not necessarily from the water  
5 side, but from the nonwater side if you're looking  
6 in and the side yard setback or above the houses  
7 that is your view shot of the lake. And any kind of  
8 obstructions either toward the side or, you know,  
9 that's why we have side yard setbacks or the height  
10 of the house, which is one of the reasons we have  
11 the height restrictions, and fences I believe are  
12 along those lines where if someone is across the  
13 street or if you have a neighbor next door and they  
14 want to look out at the lake that they're able to  
15 look above a fence.

16 MS. KELLY: And Patrick can help you. I  
17 mean, if you come in he can help you with the  
18 application.

19 CHAIRMAN BURCH: We have a motion on the  
20 floor to defer consideration of this request to  
21 April 7th, 2009 meeting. Do we have support?

22 MR. GAJEWSKI: Support.

23 CHAIRMAN BURCH: It has been moved and  
24 seconded we defer consideration to Mr. Seitz'  
25 request to the April 7th, 2009 meeting. All in

1 favor aye.

2 (All say aye.)

3 CHAIRMAN BURCH: Any opposed no. Motion  
4 carries.

5 MR. SEITZ: Thank you very much.

6 MR. MITCHELL: Thank you.

7 MR. SENSOLI: Thank you.

8 MS. KELLY: I'm curious to see what you  
9 guys come up with.

10 Mr. Burch, may I do a housekeeping item on  
11 behalf of the financial state of the Township,  
12 because Mr. Krane has brought a court reporter with  
13 him.

14 MR. KRANE: We would be happy to provide  
15 you any transcripts.

16 MS. KELLY: I would like to relieve our  
17 court reporter.

18 CHAIRMAN BURCH: Let the record show  
19 Ms. Jacoby is now going off line.

20 (Pertinent portion of meeting adjourned at 10:10 p.m.)

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CERTIFICATE

1  
2 STATE OF MICHIGAN )  
3 ) SS:  
4 COUNTY OF OAKLAND )

5 I, LAUREL A. JACOBY, Certified Shorthand  
6 Reporter, a Notary Public, hereby certify that I recorded  
7 in shorthand the foregoing proceedings; and that the  
8 foregoing is a true, correct and complete transcript of  
9 the foregoing proceedings.

10 I also certify that I am not a relative or  
11 employee of a party or an attorney for a party; or  
12 financially interested in the action.

*Laurel A. Jacoby*

13  
14 LAUREL A. JACOBY, CSR-5059, RPR  
15 Notary Public, Oakland County, Michigan  
16 My commission expires: 9/1/11  
17 Dated: This 25th day of February, 2009.