

DEXTER TOWNSHIP ZONING BOARD OF APPEALS

March 3, 2009

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IN RE: Appeal Nos. 08-ZBA-694  
09-ZBA-696  
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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 March 3, 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. PATRICK SLOAN, Director of Planning  
and Zoning

ALSO PRESENT:

MR. and MRS. GODEK, Petitioners  
MR. TEICHER, Attorney for Godeks.  
MR. and MRS. BROOKS, Petitioners

Members of the Public and Others

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

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Dexter, Michigan  
March 3, 2009  
7:00 p.m.

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CHAIRMAN BURCH: Good evening, ladies and gentlemen. Call to order the March 3rd, 2009 meeting of the Dexter Township Zoning Board of Appeals. Let it be noted that our recording secretary, Ms. Bolyard, is not in attendance this evening but we do have a certified court stenographer who will be taking minutes of the full meeting.

Before we start the meeting proper, I invite you to join me, stand for the Pledge of Allegiance.

(Whereby Pledge of Allegiance was recited.)

CHAIRMAN BURCH: Thank you, ladies and gentlemen. Our agenda this evening will start out with the approval of the agenda. As shown, the approval of the meeting minutes for December 2nd, 2008; January 6th and February 11th of 2009, public comment of any nonagenda items, action items this evening of which we have two. Agenda item No. 108-ZBA-694, Paul and Nancy Godek, 9669 Portage Lake Avenue. This is an item deferred from a previous

1 meeting.

2 Our second agenda item this evening will be  
3 08-ZBA-696, Donald Brooks, 7571 Noah's Landing.  
4 Again, an item that is brought back from being  
5 previously deferred, followed by public comment,  
6 followed by concerns of board members, zoning  
7 administrator, recording secretary and adjournment.

8 The Floor will entertain a motion to  
9 approve the agenda as read.

10 MS. KELLY: Mr. Chair, I'd like to offer an  
11 amendment to the agenda that the meeting minutes be  
12 moved, since they are extensive, to the end after  
13 action items for approval.

14 MS. ADAMS: Second.

15 CHAIRMAN BURCH: Support?

16 MS. ADAMS: Support.

17 CHAIRMAN BURCH: There's a motion on the  
18 floor to move the approval of the meeting minutes  
19 because they're very extensive this evening from  
20 their present location at the approval of the agenda  
21 to later in the meeting after the public comment.

22 All in favor of the motion as stated, say  
23 aye.

24 (All say aye.)

25 CHAIRMAN BURCH: Any opposed, no. Motion

1 carries. The Floor will entertain a motion to  
2 approve the agenda as amended.

3 MR. GAJEWSKI: So moved.

4 MS. HERDA SPRAWKA: Support.

5 CHAIRMAN BURCH: It has been moved and  
6 seconded we approved the agenda as amended. All in  
7 favor say aye.

8 (All say aye.)

9 CHAIRMAN BURCH: Any opposed, no. Motion  
10 carries.

11 Bring us to our next item, public comment  
12 on any nonagenda items. Hearing none, we will move  
13 to the first action item this evening 08-ZBA-694,  
14 Paul and Nancy Godek, 9669 Portage Lake Avenue.

15 Mr. Sloan, as our planning and zoning  
16 administrator, would you please bring The Board up  
17 to date on what this proposal or request is and  
18 where we currently stand.

19 MR. SLOAN: Sure. I'm going to read from  
20 my report of August 6th, 2008. This is a four-page  
21 report and the first report that I did on this case  
22 when I was first with the Zoning Board of Appeals.  
23 The purpose of this variance request is to allow for  
24 construction of the attached two-car garage and  
25 second story addition on the east side of the

1 existing home at 9669 Portage Lake Avenue.

2 The parcel currently contains a two-story  
3 single-family home with a lower level walkout on the  
4 lake side. According to Section 19.04.A of the  
5 Dexter Township Zoning Ordinance: "No structure may  
6 be enlarged or altered in a way which increases its  
7 nonconformity."

8 Proposed changes will alter and enlarge  
9 certain nonconformities and furthermore Section  
10 19.04(B)(3) states: "In the case where the Zoning  
11 Board of Appeals finds a proposed increase in the  
12 nonconformity, the Applicant may seek a variance."

13 The next part of my report gets into storm  
14 water management as far as some cubic volume  
15 calculations. We didn't spend too much time on  
16 that. I'm not sure that we'll spend much time on it  
17 tonight, but the long and short of that was that  
18 based on the surface area of the rain garden it  
19 should work in terms of the anticipated amounts of  
20 storm water runoff.

21 The number of variance requests begins with  
22 the lot area. According to the original application  
23 and the original survey that was dated February 8,  
24 2005, it stated that the Applicant's lot area was  
25 about point 128 acres. When we went back and had

1           remeasured the lot area, for reasons I'll get into  
2           in a few minutes, ultimately the lot area ended up  
3           to be 5,199 square feet, give or take. There were  
4           no proposed changes to the lot area but it took us  
5           some time to figure out what the area was in terms  
6           of the location of the ordinary high water mark.

7                     The next variance request is from the  
8           minimum lot frontage and lot width. The Applicant's  
9           lot is approximately 35 feet wide. No changes are  
10          proposed there. The next variance request was from  
11          the front yard setbacks. The minimum front yard  
12          setback for all lots and parcels along Portage Lake  
13          Avenue are 50 feet from the right-of-way. There's  
14          also a minimum front yard setback of 50 feet from  
15          the ordinary high water mark of Portage Lake.

16                    The existing front yard setback for the  
17          home is about 65 feet 3 inches from Portage Lake  
18          Avenue right-of-way. The Applicants proposed to  
19          create a nonconforming setback by attaching a garage  
20          and second story addition to the east side of the  
21          existing structure. The proposed front yard setback  
22          from the Portage Lake Avenue right-of-way is 43 feet  
23          five inches.

24                    The existing setback from the water's edge  
25          shown on the February 8th, 2005 survey is 37 feet 11

1 inches to the house and about 13 feet to the deck  
2 and stairs. There were no changes proposed to the  
3 water side setback. After the ordinary high water  
4 mark was placed onto the survey and the lot area was  
5 recalculated to 5,199 square feet, the setback from  
6 the ordinary high water mark to the deck was reduced  
7 by I think about the same amount, but there are no  
8 changes to that water side setback.

9 Next, the variance request for side yard  
10 setbacks. The zoning ordinance requires a minimum  
11 side yard setback of five feet plus an additional  
12 setback of one foot for each two feet that the  
13 dwelling exceeds 18 feet in height. The heights on  
14 the road and water side of the home average to about  
15 21 and a half feet which sets the minimum side yard  
16 setback at 7 feet. The existing setback on the  
17 south side is 1 foot 7 and a half inches.

18 The Applicants proposed extending the side  
19 yard setback nonconformity via the proposed  
20 addition. The proposed side yard setback on the  
21 south side for the proposed addition is 1 foot 8  
22 inches. The existing side yard setback on the north  
23 side is about two feet and no changes are proposed  
24 to the side yard setback on the north side.

25 Next is a variance request from the maximum

1 lot coverage. In the Lakes Residential District,  
2 the maximum lot coverage is 25 percent. As the  
3 Zoning Board of Appeals has considered lot coverage  
4 variances in the Lakes Residential District, there  
5 have been a handful of variances that have been  
6 granted for lot coverages over 25 percent.

7 Since the zoning ordinance was adopted and  
8 effective on May 1st, 2003, I think based on my  
9 previous review of Zoning Board of Appeals cases I  
10 think there are about two or three cases where the  
11 ZBA granted a lot coverage variance that went from  
12 under 25 percent to over 25 percent. And, as I  
13 recall, some of those were for lot coverages of  
14 somewhere between 25 and 26 percent.

15 The only other lot coverages that I've seen  
16 approved under our current zoning ordinance were lot  
17 coverages that began in excess of 25 percent and  
18 after going through the variance process and getting  
19 variances, the proposed lot coverage was something  
20 less than what they had. The final outcome of the  
21 lot coverage in those cases many times was over 25  
22 percent but it was less than what it previously was.  
23 So if it was over 25 percent, more often than not  
24 there's a reduction.

25 This ties into the lot area of the address,

1 the parcel at 9669 Portage Lake Avenue. The lot  
2 area there is 5,199 square feet and with the  
3 proposed lot coverage of 1,640.1 feet square feet,  
4 the proposed lot coverage is 31.55 percent.

5 Currently, with the updated lot area calculation,  
6 the lot coverage percent is 24.32 percent. So this  
7 is a variance request to go from a lot coverage that  
8 is currently conforming to a lot coverage that is  
9 nonconforming.

10 In terms of the lot area, we went -- we  
11 started back in I believe September. At that Zoning  
12 Board of Appeals meeting, there was a discrepancy in  
13 the area of the lot, and I wrote a memorandum to the  
14 Zoning Board of Appeals dated September 23rd, 2008.  
15 The letter was issued so it's a part of the record  
16 that concluded that the lot area -- and the lot area  
17 was based on the lot lines, one of which is the  
18 ordinary high water mark of Portage Lake Avenue.  
19 And that ordinary high water mark was established by  
20 Judge Breakey's order of February 7, 1949 in Liber  
21 522 page 129 that set the elevation of the ordinary  
22 high water mark at 851.54 feet.

23 So the updated survey that showed the  
24 updated lot area 5,199 square feet was based on the  
25 ordinary high water mark that was set back in 1949.

1 Finally, with the variance request is from Section  
2 19.22 for single-family dwelling elevations. The  
3 minimum front, side and rear elevations of  
4 single-family dwellings is 26 feet, according to the  
5 ordinance. The existing front elevation on both  
6 sides of the home is 24 feet. The proposed addition  
7 is also 24 feet wide.

8 Often times in the lakes residential area,  
9 this is a variance that is often granted because  
10 most of our lakes residential areas were  
11 historically built as cottages and as they're  
12 redeveloped when they're added onto or rebuilt  
13 slightly bigger than what they were but not exactly  
14 to what the ordinance requires in terms of  
15 elevation, that's a variance that the Zoning Board  
16 of Appeals often grants for elevations less than 26  
17 feet.

18 The third and fourth pages of this report  
19 contain a checklist and 10 items from the Dexter  
20 Township Zoning Ordinance. These 10 items come  
21 directly from Section 4.05(C) which are standards of  
22 review that the Zoning Board of Appeals has to find  
23 in order to decide whether or not to grant or deny a  
24 variance. There are eight items listed in the  
25 Zoning Ordinance. I've broken them down into 10 to

1 be a little bit more user friendly.

2 And on this checklist the application --  
3 any application has to meet all the Standards of  
4 Review before being granted a zoning variance. It's  
5 broken down into 10 different areas and only those  
6 10 areas. There have been discussions at previous  
7 meetings regarding things that the Planning  
8 Commission is doing, things that the Township Board  
9 may take up as a result of what the Planning  
10 Commission is doing.

11 And the Standards of Review typically don't  
12 contemplate a Township Master Plan or some policy  
13 that the Planning Commission is working on at the  
14 time. The Zoning Ordinance does contemplate the  
15 Master Plan in terms of things that the Planning  
16 Commission does in terms of site plan approval  
17 standards, special land use approval standards,  
18 rezoning approval standards.

19 Within those Standards of Review, there's  
20 often a line that asks whether or not the  
21 application is in harmony with the general  
22 development plan. So the general development plan  
23 or the Master Plan as a day-to-day guide is  
24 something that's used by the Planning Commission to  
25 determine land uses, different applications that it

1 sees, and the Township Board is supposed to use the  
2 standard as well.

3 In terms of the Zoning Board of Appeals,  
4 the Zoning Board of Appeals doesn't typically use  
5 the Master Plan as a policy guide or any kind of  
6 guideline towards what it's doing. One example of  
7 how the Zoning Board of Appeals sometimes uses other  
8 areas of the ordinance to place conditions on an  
9 application are when the Zoning Board of Appeals  
10 puts in storm water management standards for an  
11 application. The Zoning Board of Appeals can go to  
12 a section of the ordinance and enforce a section if  
13 there is a needed condition there to further the  
14 goals of the Standards of Review.

15 And so Section 24.03(C) the Zoning Board of  
16 Appeals uses that section to require storm water  
17 management mitigation for development and  
18 redevelopment in the lakes areas in order for that  
19 section to be met. So that's the case where the  
20 Zoning Board of Appeals can go to a section of the  
21 ordinance and enforce something in an area where  
22 it's most needed i.e. the lakes areas, but it can  
23 only be related to something that the ordinance  
24 spells out as a policy guideline, not something that  
25 the Master Plan spells out.

1                   So I wanted to go over that again. I did  
2 go over it at the February ZBA meeting and I read  
3 the court report, and it was pretty comprehensive  
4 but I did want to mention again about the separation  
5 of the Zoning Ordinance and the Master Plan and the  
6 separation of powers of the Planning Commission and  
7 Township Board and the Zoning Board of Appeals in  
8 terms of setting policy for the Township.

9                   One of the things that came up was the  
10 concept of aging in place, and it's a planning issue  
11 that's getting a lot more attention now that the  
12 baby boom generation is growing older and the  
13 housing for the next generation is not going to be  
14 like the housing of the last generation. And it's a  
15 provocative item to discuss and act on in terms of  
16 planning, in terms of policy and how we want the  
17 Township to look and how the area, the region, to  
18 look in terms of where not only in Dexter Township  
19 or in the region the elderly population may end up  
20 living or gravitating to.

21                   That's something that the Master Plan at  
22 some point will contemplate, something that they've  
23 had very little discussion on. So it's in its  
24 infancy in terms of the Township formulating a  
25 policy on that. When it does, what will happen

1 first is it will be in the Master Plan in terms of  
2 what the Township wants its policy to be, and  
3 ultimately if the Township can have language for the  
4 Zoning Ordinance it may one day end up as a Zoning  
5 Ordinance standard. But in its early stages now  
6 it's a very abstract idea that's being dealt with by  
7 the Planning Commission.

8 So I just wanted to get into that and  
9 rehash a lot of what I said back in the February  
10 meeting, and with that I'll take any questions or  
11 comments that you have.

12 CHAIRMAN BURCH: Thank you, Mr. Sloan, for  
13 a very comprehensive description of how we got to  
14 where we are in this case.

15 And Mr. Godek, I will obviously allow you  
16 to address The Board but before I do I'm going to  
17 ask board members if they have any comments or  
18 questions for Mr. Sloan. Hearing none at this time,  
19 Mr. Godek.

20 MR. GAJEWSKI: Steve, excuse me.

21 CHAIRMAN BURCH: I'm sorry, Bill. Go  
22 ahead.

23 MR. GAJEWSKI: I guess I might make a  
24 comment.

25 As Patrick said, the ZBA can only use

1           what's spelled out in the Zoning Ordinance but I  
2           think aging in place is allowed via Section 19.09  
3           which is hardship cases. I guess, first of all, I  
4           just wanted to point out that in a perfect world all  
5           aging in place would take place in a single-story  
6           ranch home. However, today providing for an aging  
7           parent on a second story of a home is no longer as  
8           burdensome or a liability as it was in the past.

9                       New affordable aging-in-place elevators  
10           just introduced in the last three years make this  
11           possible. In fact, you can even take a wheelchair  
12           friendly elevator with you when you move. One can  
13           go to the February 21st home section of the Detroit  
14           News or Master Handyman dot com articles by  
15           Glenn Hagy for specifics. So I think it's very  
16           clear that the ZBA can grant a variance for  
17           hardship.

18                      Section 19.09 it states, it says:  
19           Nonconforming buildings or structures may be  
20           structurally changed, altered or enlarged with the  
21           approval of the ZBA when the ZBA finds that the  
22           request is a case of exceptional hardship, which is  
23           the true intent and purpose of 19.09.

24                      CHAIRMAN BURCH: Mr. Sloan.

25                      MR. SLOAN: Section 19.09 was amended

1 through Amendment 34-4.

2 MR. GAJEWSKI: Okay.

3 MS. KELLY: It doesn't read that way.

4 MR. GAJEWSKI: It doesn't read that way?

5 Okay.

6 MR. SLOAN: Yeah, it was amended. 34-4 was  
7 adopted by the Township Board on March 20th, 2007  
8 and became effective on April 5th, 2007.

9 MR. GAJEWSKI: Okay.

10 MR. SLOAN: And the main changes there was  
11 to take out the term hardship and substitute with  
12 practical difficulty. The reason being that --

13 MR. GAJEWSKI: Right.

14 MR. SLOAN: -- hardship and practical  
15 difficulty historically would go hand-in-hand in  
16 terms of Zoning Board of Appeals' Standards of  
17 Review, and those were separated with the Michigan  
18 Zoning Enabling Act. So in response we amended our  
19 Zoning Ordinance to take out all references to  
20 hardship and just stick with practical difficulty.  
21 The change that we didn't make though is the title  
22 of Section 19.09 is hardship cases. The title  
23 itself is not a regulatory item but the text within  
24 it refers a practical difficulty and not a hardship  
25 or a reference thereto.

1 MR. GAJEWSKI: Okay.

2 CHAIRMAN BURCH: Thank you for that  
3 clarification, Mr. Sloan. Mr. Gajewski, does that  
4 have a substantial --

5 MR. GAJEWSKI: Not really because it's  
6 still the title of the -- it's hardship cases, so I  
7 think it's still clear, very clear that the ZBA can  
8 grant a variance for a hardship. And Section 19.09  
9 states or it did state, like I said earlier, that,  
10 you know, that nonconforming buildings or structures  
11 may be structurally changed or altered or enlarged  
12 with the approval of the ZBA when the ZBA finds that  
13 the request for exceptional, what does it say now,  
14 that the request is a case of exceptional, now it  
15 says practical difficulty?

16 MS. KELLY: Uh-huh.

17 MR. GAJEWSKI: Okay. Which is -- I can  
18 understand that because the courts have ruled that  
19 hardships applies to use variances and practical  
20 difficulties applies to dimensional variances.

21 But I think the -- it's still the title of  
22 Section 19.09 is still hardship. I mean, as far  
23 as -- hardship is not defined in our Zoning  
24 Ordinance and that is the title of this Section  
25 19.09. Webster's defines hardship as hard

1           circumstances of life; therefore, caring for aging  
2           parents is the epitome of hardship of the  
3           difficulties of life.

4                       I think 19.09, I think it states -- I  
5           hope -- that failure to grant relief for hardship or  
6           practical difficulty would unreasonably restrict  
7           continued use of that property. Is that still in  
8           there?

9                       CHAIRMAN BURCH: I think for the  
10          edification of everyone, I am going to exercise my  
11          discretion as Chair and read Section 19.09 Hardship  
12          Cases, as amended by --

13                      MR. GAJEWSKI: Order.

14                      CHAIRMAN BURCH: -- by Amendment 34.

15                      Section 19.09 Hardship Cases.

16          Nonconforming buildings or structures may be  
17          structurally changed, altered or enlarged with the  
18          approval of the Zoning Board of Appeals when the  
19          Zoning Board of Appeals finds that the request is a  
20          case of exceptional practical difficulty in which  
21          failure to grant the relief requested would  
22          unreasonably restrict continued use of the property  
23          or would restrict valuable benefits that the public  
24          currently derives from the property as used in its  
25          nonconforming status. Except that any approval for

1 structural changes, alteration or enlargement may be  
2 granted only with a finding by the Zoning Board of  
3 Appeals that the approval will not have an adverse  
4 effect on surrounding property and that it will be  
5 the minimum necessary to relieve the practical  
6 difficulty. Amendment Ordinance 34-4.

7 Thank you, Ms. Kelly.

8 MS. KELLY: Uh-huh.

9 CHAIRMAN BURCH: Mr. Gajewski.

10 MR. GAJEWSKI: Yes. So basically it's the  
11 same thing. The only thing that seems to be changed  
12 there is that hardship has been changed to practical  
13 difficulty which are one in the same which are  
14 synonymous.

15 And so Sections 19.09 does, in fact, state  
16 that failure to grant relief for hardship or  
17 practical difficulty would unreasonably restrict  
18 continued use of that property. That must apply. I  
19 think yes, failure to grant relief for exceptional  
20 hardship would restrict continued use of the  
21 property to take care of an aging parent.

22 Section 19.09 also states that approval  
23 will not have an adverse effect on surrounding  
24 property. And the neighbors have signed a letter of  
25 support and are in agreement, and Janiga and

1 Associates, they're an excellent architectural group  
2 and they did an excellent job of masking, of  
3 minimizing the impact of increased mass by tucking  
4 the increased size of the structure under the eaves.  
5 And actually, this is a Dutch hip roof which  
6 actually even makes the house -- reduces the  
7 increased mass of the house. So that is, in fact,  
8 applicable.

9 And it also states that the variance must  
10 be the minimum necessary, which is subjective. So  
11 from a pragmatic point of view, with the continued  
12 decline in property values, I think townships are  
13 forced to operate on shoestring budgets and we don't  
14 need extra taxpayer money for lawsuits. And  
15 allowing a single variance to exceed the 25 percent  
16 lot area coverage because of hardship or this  
17 practical difficulty to take care of aging parents  
18 is not the same as allowing one to exceed the 25  
19 percent lot area coverage to build a McMansion, and  
20 therefore this will not open up the floodgates for  
21 additional variance requests.

22 CHAIRMAN BURCH: Thank you, Mr. Gajewski.  
23 Any other comments or question from Members of the  
24 Board before we ask the Applicant to address The  
25 Board?

1 MS. KELLY: I guess --

2 CHAIRMAN BURCH: Ms. Kelly.

3 MS. KELLY: -- to follow up on practical  
4 difficulty, I understand that the new Planning and  
5 Enabling Act required the change away from hardship  
6 because it applies in the statute.

7 MR. SLOAN: Zoning and Enabling Act.

8 MS. KELLY: Right. What did I say,  
9 Planning and Enabling? Zoning and Enabling Act.

10 It applies to use variances as opposed to  
11 dimensional variances. So we're stuck with this  
12 practical difficulty thing which by its very nature  
13 to me indicates that's not as high a bar as hardship  
14 is. So what I'm looking for here is, Pat, I mean,  
15 it says exceptional practical difficulty.

16 And we've always been counseled here, and I  
17 think we've gone to many classes that say practical  
18 difficulties have to do with the land. We don't  
19 grant variances to people, we grant variances to  
20 property because it runs with the property, not with  
21 the Godeks, not with anybody else. So I'm having a  
22 little trouble connecting the dots on those two  
23 things because in my view we've been taught that  
24 we're not supposed to do exactly what you're  
25 suggesting we do do.

1           And, I mean, and if we're getting to it, I  
2           respectfully disagree that this is, A, the minimum  
3           required because I don't see how it is. And B, that  
4           it is -- well, I'll just leave it at that for right  
5           now. I lost my train of thought.

6           MR. SLOAN: To simplify Section 19.09,  
7           there are four things that stand out within this  
8           paragraph, and I'll just take direct quotes from the  
9           paragraph. No. 1, exceptional practical difficulty;  
10          No. 2, failure to grant relief requested would  
11          unreasonably restrict continued use of the property;  
12          No. 3, adverse effect on surrounding property, or  
13          will not have an adverse effect on surrounding  
14          property; and four, it will be the minimum necessary  
15          to relieve practical difficulty.

16          Now, these four items that I just cited  
17          come almost verbatim from Section 4.05(C). Perhaps  
18          it would be logical in the future to have an  
19          amendment to 19.09 to say something to the effect of  
20          see 4.05(C) because of some these standards of  
21          review within 19.09 are the exact standards of  
22          review of 4.05(C). So to me looking at this section  
23          and interpreting it as the zoning administrator, I  
24          would go directly to the 4.05(C) where it not only  
25          has the same Standards of Review but expands on

1           these Standards of Review. They're not more,  
2           they're not less, they're very much the same.

3                         And going back to 4.05(C), going back to  
4           this checklist and going by it one by one, does this  
5           case, does this application meet the standard or  
6           not, rather than getting into another section of the  
7           Zoning Ordinance that says basically the same thing.

8                         CHAIRMAN BURCH: Ms. Kelly.

9                         MS. KELLY: If I may. My question is this,  
10          Patrick. I see the parallels and, you know, again,  
11          I would remind everybody we don't write the  
12          ordinance here. We make suggestions occasionally to  
13          the Planning Commission who does write the ordinance  
14          and we sometimes support those recommendations to  
15          the Township Board, but we don't write it. We  
16          interpret it.

17                        And I don't have an issue with your  
18          interpretation but is there somewhere in the law  
19          that -- I mean, was this -- is what you're saying is  
20          we should have eliminated this entire paragraph  
21          because it actually referred to a use variance that  
22          we don't -- we're not even allowed to grant. I  
23          mean, we had other cases in here where our previous  
24          planner had actually recommended language having to  
25          do with use variances which we're not allowed to

1 give. So is this a holdover from that? Is that  
2 what you're saying?

3 MR. SLOAN: It may be a hold over. When it  
4 was written to include practical difficulty, I don't  
5 think that text amendment or keeping this paragraph  
6 took the ordinance in one direction or the other. I  
7 think the long and short of this is that it recites  
8 basically what's in Section 4.05(C) where -- and  
9 mind you, Section 19 comes out of Article 19, which  
10 is nonconforming uses, lots and structures.

11 And the preceding sections before Section  
12 19.09 discuss nonconforming lots, nonconforming uses  
13 of land, nonconforming structures, and it instructs  
14 the applicant or the zoning administrator or whoever  
15 the reader is that if there's a change in the  
16 nonconformity that it goes to the Zoning Board of  
17 Appeals. And up until this point, it is almost like  
18 a paragraph that belongs in the nonconforming  
19 structures section in 19.04. But I don't think the  
20 way 19.09 reads does anything to Section 19.04 or to  
21 Section 4.05(C) for that matter that changes the  
22 nature of how the ordinance is read the last several  
23 years since it was adopted.

24 MS. KELLY: Well, is there something in the  
25 law --

1 MR. GAJEWSKI: Yes.

2 MS. KELLY: -- that says you can grant a  
3 dimensional variance to a person? Because that's  
4 what you're suggesting here.

5 MR. GAJEWSKI: Mr. Chair.

6 CHAIRMAN BURCH: One at a time, please.  
7 Mr. Gajewski.

8 MR. GAJEWSKI: Well, as far as  
9 Mr. Eidelson, our past planner, often would confuse  
10 practical difficulties with hardships, and so the  
11 title of this 19.09 is hardship cases and then it  
12 goes on within there to talk practical difficulty.  
13 So it's got -- both words are in there and,  
14 therefore, it is absolutely interpreted that they're  
15 synonymous, that hardship and practical difficulty  
16 are there, otherwise it should have -- I mean, it  
17 just doesn't make sense because it's hardship cases  
18 and then all it talks about is practical difficulty  
19 within the body of the text.

20 So I know what you're saying, but anyway  
21 so, you know, so hardship cases and practical  
22 difficulty is the same. And because -- and, you  
23 know, as far as the benefit of the doubt always goes  
24 to the Applicant. And so this could be interpreted  
25 both -- this is -- I mean, the hardship just by

1 changing practical difficulty within the body of  
2 text does not change --

3 MS. KELLY: Irrespective of the  
4 terminology, Bill, where do you take the leap that  
5 this applies to a person as opposed to a property?

6 MR. GAJEWSKI: Because it's in the  
7 ordinance.

8 MS. KELLY: It doesn't say a person.

9 MR. GAJEWSKI: It says hardship cases. It  
10 says hardship cases. So we -- it's an exception  
11 within the ordinance as hardship cases. It doesn't  
12 say practical difficulties.

13 MS. KELLY: But it doesn't say people  
14 hardship cases.

15 MR. GAJEWSKI: It says hardship cases.

16 CHAIRMAN BURCH: Ms. Adams.

17 MS. ADAMS: I don't see where the ordinance  
18 states anything about how we should evaluate the  
19 hardship.

20 MS. KELLY: There's no standards.

21 MS. ADAMS: There's no standard.

22 MR. GAJEWSKI: It says that failure to  
23 grant relief for hardship would unreasonably  
24 restrict continued use of the property. That has to  
25 apply. And yes, that failure to grant relief for

1           this exceptional hardship would restrict continued  
2           use of that property and to care for the neighbor.

3           MS. ADAMS: Where is the proof of that?

4           MR. GAJEWSKI: What do you mean, that is  
5           just common sense.

6           MS. ADAMS: Have we heard from a social  
7           worker?

8           MR. GAJEWSKI: We need a social worker?

9           MS. ADAMS: I would say so. Where is the  
10          evidence this family member --

11          MR. GAJEWSKI: Well, you know, as far as we  
12          could be very cynical and say -- the second story is  
13          inappropriate, but it's not. I mean, that's just --  
14          I think that 19.09 does apply. I think that, you  
15          know, it's a matter of how it's interpreted. I  
16          think that aging in place, that's the spot for it.  
17          You know, when you read it, if you start reading  
18          into it, it's like --

19          MS. ADAMS: I would say if we were to carry  
20          forward on that, the Township should have on the  
21          committee evaluating the substance of such a request  
22          a social worker, a medical -- somebody from the  
23          medical profession.

24          MR. GAJEWSKI: We're growing government,  
25          okay.

1 MS. ADAMS: I mean --

2 MR. GAJEWSKI: To allow aging in place we  
3 should have a social worker.

4 MS. KELLY: Bill, how do you reconcile this  
5 with when the Godeks move and the next person is the  
6 beneficiary of their hardship?

7 MR. GAJEWSKI: Well, just like it says, as  
8 far as these -- within the last three years they  
9 have elevators that you can take the elevator out.  
10 I mean, what it says within Section 19.09, one of  
11 the criteria is that it must not adversely affect  
12 the surrounding property, and we have letters or,  
13 you know, signatures from the surrounding neighbors  
14 that it does not -- that there's no problem.

15 So if they don't have a problem -- and as  
16 far as Janiga and Associates, I know their work as  
17 far as they did a very good job of masking and  
18 creating an esthetically pleasing, down to the human  
19 scale, Dutch hip, bringing the structure down. So I  
20 think that they meet that requirement. You know,  
21 it's --

22 MS. KELLY: You think that two-and-a-half  
23 car garage is a minimum requirement?

24 MR. GAJEWSKI: Well, again, that's  
25 subjective. That's up to The Board as far as it has

1 to be the minimum necessary to relieve the hardship.  
2 And like but I say, as far as by saying in the  
3 ordinance it's a hardship case at the title and then  
4 changing the word practical difficulty within the  
5 body of the text, that's not enough to say, oh, this  
6 is -- practical difficulty is no longer hardship to  
7 me.

8 MS. KELLY: Sorry, Mr. Chair.

9 CHAIRMAN BURCH: Ms. Kelly.

10 MS. KELLY: What do you think the practical  
11 difficulty is?

12 MR. GAJEWSKI: Well, there's clearly a  
13 practical difficulty there as far as the size of the  
14 lot, the topography and everything. That's clearly  
15 a practical difficulty that applies to the land.

16 MS. KELLY: It applies to every single  
17 person on that street.

18 MR. GAJEWSKI: It applies to every variance  
19 that we grant.

20 MS. KELLY: But we evaluate them based on  
21 some standards, and so far in six years, in six  
22 years we have not granted a variance anywhere close  
23 to the size and scope of this one. So what is the  
24 practical difficulty here that makes it reasonable?

25 MR. GAJEWSKI: Hardship. 19.09 Hardship

1 Case.

2 MS. KELLY: What is the hardship? What is  
3 it?

4 MR. GAJEWSKI: Aging -- as far as -- oh,  
5 God, as far as parents -- caring for elderly  
6 parents, which is a tremendous burdensome task.

7 MS. KELLY: I understand that. I cared for  
8 one too. I bought her a house, a ranch.

9 CHAIRMAN BURCH: One at a time, please.

10 MS. KELLY: You know, there are plenty of  
11 ways. I don't understand that a personal choice to  
12 have a parent live with one, while admirable --

13 MR. GAJEWSKI: Yeah.

14 MS. KELLY: -- is a hardship. I don't  
15 understand it at all in terms of the land.  
16 Practical difficulties and variances run with the  
17 land, not with people. And that's where I can't --  
18 while I have great sympathy for the Godeks'  
19 situation, I care for an aging mother myself. Like  
20 I said, I bought her a ranch house. We had to make  
21 modifications for her. But, I mean, that was how we  
22 solved it. Perhaps it wasn't the best way but it  
23 didn't require a variance.

24 CHAIRMAN BURCH: Thank you, Ms. Kelly.  
25 Does anyone on The Board have anything else at this

1 point?

2 Hearing none, I'm going to invite Mr. Godek  
3 and/or his counsel to address The Board to ask if  
4 they would care to shed any light on the dilemma  
5 that we had identified.

6 MR. TEICHER: I just have --

7 CHAIRMAN BURCH: Name and address, please.  
8 You are Mr. Godek's counsel?

9 MR. TEICHER: Yes. Mark Teicher,  
10 T-E-I-C-H-E-R, counsel for the Applicant.

11 I just would have a question, Ms. Kelly,  
12 when you were referring to the classes where you  
13 learned this, I was wondering what classes those  
14 are.

15 MS. KELLY: The Master Citizen Planner  
16 courses. I've taken advanced Master Citizen Planner  
17 courses twice, which are two-day affairs. I've gone  
18 on Michigan Association of Planners annual workshops  
19 twice. I mean, it's a common theme, clearly, these  
20 kinds of things.

21 MR. TEICHER: I just want to know what  
22 you're relying on for the expertise you commented  
23 on. That's all.

24 MS. KELLY: If you wanted me to cite a  
25 specific class, I can't tell you. I can recite all

1 the ones I've gone to and I could go back to my  
2 office and dig up some citations but I have attended  
3 a significant amount of classes and I am a certified  
4 Master Citizen Planner. I mean, that doesn't make  
5 me an AICP Certified Planner, which is why I still  
6 ask Patrick a lot of questions, but I do know -- I  
7 mean, that's just -- I don't know how you get to  
8 granting a variance over -- it's a question I have.  
9 I'm not stating, but everything I've learned so far  
10 says don't.

11 MR. TEICHER: You said classes and just I  
12 wanted to know what they were. And otherwise my  
13 client I think would have some final comments.  
14 Thank you.

15 CHAIRMAN BURCH: Mr. Godek, do you care to  
16 address The Board, sir?

17 MR. GODEK: Yes, Mr. Chairman. Paul Godek,  
18 and I'm here tonight, of course, with my counsel,  
19 Mark Teicher. Myself and my spouse Nancy are the  
20 homestead property owners of the 9669 Portage Lake  
21 Avenue property that's on the agenda before The  
22 Board tonight.

23 And I want to take this opportunity to  
24 thank The Board from working from both sides of  
25 table with us over these past months to vet out the

1 proposed project's key elements. And with that in  
2 mind, tonight we do petition The Board for  
3 substantial justice for a grant of relief for the  
4 agenda items as needed to allow this project to move  
5 forward. Thank you.

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

8 While Members of the Board are deciding  
9 what their next step shall be, I shall invite anyone  
10 in the audience that cares to address The Board  
11 regarding this issue to do so.

12 Hearing none, we're -- Members of the  
13 Board? Mr. Gajewski?

14 MR. GAJEWSKI: I just wanted to say that  
15 Section 19.09 Hardship Cases, I can understand, you  
16 know, as far as Pat's position on practical  
17 difficulty but it is, in fact, in the ordinance and  
18 it's confusing. I mean, it talks about hardship  
19 cases and that is not a practical difficulty. It's  
20 not something that -- you know, it almost goes away  
21 from a dimensional variance. It's sort of unique to  
22 itself. And it's the perfect place for aging in  
23 place and that seems to apply there.

24 Like I said in the past, Eidelson, he would  
25 synonymously, or I don't know if I got the right

1 word, he would interchangeably use practical  
2 difficulty and hardship interchangeably. So he was  
3 the one that did, in fact, draft this ordinance. So  
4 that's all I've got.

5 CHAIRMAN BURCH: Thank you, Mr. Gajewski.  
6 Ms. Kelly.

7 MS. KELLY: I guess my comment is there's  
8 the word exceptional there and you can argue  
9 about -- whether it said hardship or practical  
10 difficulty it still says exceptional and it always  
11 has.

12 MR. GAJEWSKI: Right.

13 MS. KELLY: And I don't know what is  
14 exceptional about the Godek property that doesn't  
15 apply to very many, very, very many properties  
16 around our lakes. So that's, you know -- I'm trying  
17 to figure out how you justify this getting over that  
18 bar, Bill, because we've had plenty of cases in  
19 front of this board since the ordinance was passed  
20 and is our interpretation different?

21 I mean, I don't know how you make a case  
22 that your interpretation here isn't arbitrary and  
23 capricious. I don't know how do you that. I mean,  
24 why did you tell Wayne Castledine who has a 4,000  
25 square foot lot you can't have a garage, you have

1 to -- you know, when he's got -- he is aging himself  
2 and wants a garage. He went to the Planning  
3 Commission, he waited for the Township Board, he  
4 waited for the process and finally gave up waiting  
5 and built his house on a 4,000 square foot lot under  
6 25 percent. Just barely but under 25 percent. So,  
7 I mean, how do you look Wayne Castledine in the eye  
8 who was before this board less than six months ago  
9 and say your hardship or practical difficulty didn't  
10 rise to this bar but Mr. Godek's does? What's  
11 different?

12 MR. GAJEWSKI: Mr. Chair.

13 CHAIRMAN BURCH: Mr. Gajewski.

14 MR. GAJEWSKI: As far as in this case, the  
15 Applicant is caring for aging parents, so that's the  
16 difference, No. 1. And No. 2, in this case, I'm  
17 looking at Section 19.09 as a hardship case and,  
18 therefore, allowing a single variance to exceed the  
19 25 percent lot area coverage because of -- in this  
20 case because of hardship, to take care of his aging  
21 parent, is not the same.

22 It's not the same as allowing one to exceed  
23 the 25 percent lot area coverage to build a  
24 McMansion, you know, because they want a dimensional  
25 variance and, therefore, this would not open up the

1 floodgates for additional --

2 MS. KELLY: Bill, I would take a poll at  
3 this table and say how many of us are caring for  
4 aging parents. I am, you are. I don't know if Mary  
5 is but that's not exceptional.

6 MR. GAJEWSKI: I'm sorry, why would it be  
7 on the cover of Zoning and Planning News that this  
8 is something that we have to address if it wasn't  
9 significant and important and not that just because  
10 everybody's going to do it. Yeah, everybody's going  
11 to do it but it doesn't take away from the fact that  
12 it is an exceptional hardship. It is.

13 CHAIRMAN BURCH: Ms. --

14 MS. ADAMS: I think I raised my hand first.

15 CHAIRMAN BURCH: Ms. Adams, you have the  
16 floor.

17 MS. ADAMS: Now, I read that article also,  
18 and I did not get a sense that the article was  
19 making directives to Zoning and Planning Commissions  
20 to go case by case. It was talking about sort of  
21 township wide what are the inventory of the homes,  
22 let's maybe give some encouragement if we have OSCs,  
23 you know, some bonus points for people that are  
24 developing houses of a smaller magnitude or that the  
25 open areas in the developments had handicap

1 accessible pathways, things of that nature.

2 It was not carte blanche if someone comes  
3 to you with -- and, you know, I do respect Mr. Godek  
4 that you're trying to care for your aging parents  
5 but having gone to, you know, the public forum  
6 meetings and heard the sentiment of the community  
7 which is let's not have McMansions on lake side  
8 properties, I just cannot in good conscience as I  
9 sit on this board approve such an increase in lot  
10 coverage as you're requesting.

11 And again, Bill, when you say hardship, and  
12 I'm not trying to, you know, slight you, but I feel  
13 that's completely outside the purview of this board  
14 to on a case-by-case assess the family's hardship  
15 and the size of their home and what the needs are to  
16 care for the aging parent or the sick member of the  
17 family. I just, you know, I think keeping to the  
18 standards that we have in our ordinances, you know,  
19 it's just a lot. It's what we're here to do.

20 CHAIRMAN BURCH: Thank you, Ms. Adams.  
21 Ms. Herda Sprawka.

22 MS. HERDA SPRAWKA: I would like to say  
23 that I agree with Ms. Adams and I would also like to  
24 say that I plan on aging in place; however, as of  
25 now, as a member of the Zoning Board, I can't make

1 decisions based on aging in place. It's not part of  
2 our ordinance as I know it. So although I have a  
3 lot of sympathy and a lot of -- I understand the  
4 needs, the ordinance has not changed to include that  
5 as part of our deliberations here as I interpret it.

6 So although I think it bears merit and in  
7 the future should be something we as a community  
8 consider, it's not something we can use right now as  
9 part of our standards of making a choice or decision  
10 in this situation as far as I understand it.

11 CHAIRMAN BURCH: Thank you, Ms. Herda  
12 Sprawka. Mr. Gajewski.

13 MR. GAJEWSKI: Well, I guess it's apparent  
14 that the majority of the board members do not  
15 believe that 19.09 Hardship Cases apply but I still  
16 think it's confusing and I still think that the  
17 benefit of the doubt should go to the Applicant.  
18 And it is in the Zoning and Planning News in the  
19 September 2008 book. It does, in fact, say that,  
20 you know, that our Zoning Ordinance should be  
21 adjusted to allow for a variance for aging in place,  
22 and they even mention it someplace in here that  
23 variances should be given. That was one of the  
24 mechanisms to allow aging in place.

25 CHAIRMAN BURCH: Thank you, Mr. Gajewski.

1 Members of the Board? Ms. Kelly.

2 MS. KELLY: Well, Mr. Godek obviously sat  
3 on this Board as an alternate member for quite  
4 sometime, and he's sat on this side of the table and  
5 listened to other people's pleas for increases in  
6 lot coverage and actually voted on some of them, and  
7 because of that if Paul came in here asking for this  
8 he had reason to believe at least in his mind that  
9 he had justification to do so and it met the  
10 Standards of Review.

11 So working on that premise that you are a  
12 very knowledgeable resident about our Standards of  
13 Review, which a lot of people aren't, I worked  
14 harder, dug deeper to convince myself that either  
15 you met or you didn't meet the Standards of Review.  
16 So normally I would drive down a street and try to  
17 ascertain a look and feel of a neighborhood and  
18 sizes of stuff, and in this case I went a little  
19 further than that because actually you did yourself  
20 and you provided us a lot of pictures of your  
21 neighborhood, and particularly homes with garages  
22 and stuff.

23 So I went to the Township assessing  
24 records, which are public knowledge, they're the  
25 2008 records, and I looked at all the houses on

1 Portage Lake Avenue. And there are 56 homes on  
2 Portage Lake Avenue that includes a mix of  
3 lakefront, nonlakefront, but primarily lakefront  
4 houses. I took a look at and I plotted the land  
5 area and the lot coverage of all of those homes.  
6 And I have copies of that graph for everybody to  
7 look at including you guys.

8 CHAIRMAN BURCH: Ms. Kelly, do you have a  
9 copy for Mr. Godek and his counsel?

10 MS. KELLY: Yes, I do.

11 CHAIRMAN BURCH: Thank you.

12 MS. KELLY: And just again, some facts.

13 CHAIRMAN BURCH: May I interrupt for a  
14 moment, Ms. Kelly?

15 MS. KELLY: Sure.

16 CHAIRMAN BURCH: Also, I think in deference  
17 to our other Members of the Public who are here, if  
18 we have an extra copy I'd like to provide that to  
19 them so they can follow the arguments.

20 MS. KELLY: Again, my aim was to find out  
21 where Mr. Godek's request fit in all of this and so  
22 out of the 56 homes, only eight of them, only 14  
23 percent, are smaller than Mr. Godek's, so he is on  
24 the small side. 85 percent of the lots are larger  
25 than Mr. Godek's.

1                   But if you look at the graph you'll see  
2                   that there's a big band of -- you know, the majority  
3                   of the homes are between six and maybe eight to  
4                   9,000 maybe even 10, but I guess it's clear to me  
5                   from looking at this scatter plot that Mr. Godek's  
6                   home isn't all that -- his lot size isn't all that  
7                   unusual. It's on the small side but it's not  
8                   totally unusual.

9                   So of all those lots, all 56 of them, I  
10                  looked at how many are over 25 percent and there's  
11                  only five. So and then I plotted of course this  
12                  last little triangle here where Mr. Godek has  
13                  requested that we take him, and this is where I have  
14                  the most difficulty because if you look at the  
15                  minimum required for reasonable use, even if you buy  
16                  Bill's standard, I look at that and I say is it  
17                  appropriate should we grant any variance at all to  
18                  make Mr. Godek almost the most nonconforming guy on  
19                  the whole street.

20                  I will point out that the dot right above  
21                  Mr. Godek's 32 percent there is a home with a  
22                  1,200-square-foot garage. And I did a little  
23                  research on that one because I couldn't figure out  
24                  how anybody in the Lakes Residential District ever  
25                  had permission to build a 1,200-square-foot garage

1 and I, in fact, couldn't find any evidence that they  
2 did have permission. I did find evidence however  
3 that it's been there for a couple of decades.

4 So, I mean, I'm not saying he doesn't have  
5 permission because we don't necessarily have good  
6 building records back that far. But there's no  
7 evidence in our file that it's been there. So I  
8 guess in sum, what this chart told me is, yeah,  
9 Mr. Godek's lot is pretty small but there's a lot of  
10 other lots that are equally as small, and to me he  
11 falls in about where he should.

12 So then I did some more plotting of living  
13 area, and I got a picture of this for everybody.  
14 Can you take one back to the Brooks, please? And  
15 lot coverage is part of the equation but living area  
16 is the other part of the equation and to me speaks  
17 volumes about the reasonableness of the request.

18 So you can see the existing Godek property  
19 right at just under 25 percent. It doesn't have a  
20 tremendous amount of lot coverage but it has one of  
21 the highest living areas of anybody in the  
22 neighborhood. And, in fact, you know, I put the  
23 little quadrant there. If you look at what  
24 Mr. Godek is requesting, he will be in the upper  
25 right-hand quadrant all by himself with the highest

1 lot coverage and the most living area.

2 I think that doesn't meet the bar of  
3 minimum for reasonable use. And, like I said, the  
4 purpose of all this was to kind of put Mr. Godek's  
5 request in perspective. I would add, I mean,  
6 there's a thing on there that defines what living  
7 area is. It's -- if you went in with a tape measure  
8 and did a realtor's measurement of your house it  
9 might not come up exactly these numbers. It  
10 wouldn't for anybody. I mean, the numbers relative  
11 to each other are identical but the living area is  
12 defined as the primary residence floor areas  
13 calculated by our township assessor exclusive of  
14 garages, decks, porches and basements. So that's  
15 where that number comes from.

16 The last thing I took a look at were  
17 garages. If we make a case that a garage is a  
18 necessity, which I don't think there's a lot of  
19 cases to say that a garage is a necessity, but where  
20 does that fall with what else is on the street.

21 So what this graph is trying to show and  
22 perhaps not as clearly as it should is I plotted out  
23 for -- well, you can see on the bottom there, again,  
24 it's the same 56 homes. Of those 56, less than or  
25 26 even have garages and over 50 percent of those

1 garages are smaller than what Mr. Godek is  
2 requesting.

3 So and then if you look at the ones that  
4 are larger than what Mr. Godek is requesting, other  
5 than the real oddball there at 32 percent lot  
6 coverage, most of them that have big garages have  
7 very low lot coverages, 12 percent, 13 percent, 14  
8 percent, then a couple at 22. But if they have big  
9 garages, with the exception of that one oddball,  
10 they typically have a lot of land to support it.

11 So I just -- like I said, these graphs were  
12 intended to put things in perspective and for me  
13 they kind of did and they said this request is out  
14 of line with what's in the neighborhood. And, I  
15 mean, it's certainly less than the minimum required  
16 for reasonable use. So I just offer that for The  
17 Board's consideration and comment. If you have any  
18 questions about any of it.

19 CHAIRMAN BURCH: Thank you, Ms. Kelly. Any  
20 questions for Ms. Kelly? Hearing none, is The Board  
21 prepared to present a motion regarding Mr. Godek's  
22 request?

23 MS. KELLY: I don't know that I'm prepared  
24 to offer -- I have all kinds of comments that as  
25 I've gone through all this evidence that I've

1 written down and maybe I could talk about some of  
2 that on the record because I don't know that it all  
3 would be captured in the motion, but it certainly  
4 speaks to the findings of fact that -- at least my  
5 findings of fact.

6 CHAIRMAN BURCH: You have the floor,  
7 Ms. Kelly.

8 MS. KELLY: Looking at the April 12th, 2008  
9 letter from Mr. Godek to the Zoning Board of  
10 Appeals, under 1(A) Mr. Godek states: A practical  
11 difficulty makes strict compliance impossible due to  
12 lot size. And again, as I pointed out with all that  
13 data, the lot is small but it's already noncompliant  
14 and it has been for many years and it is in keeping  
15 with other lots. There's nothing particularly  
16 unique about this lot, in my view.

17 And then talks about the topography and,  
18 frankly, I think the topography of this lot rather  
19 than being a detriment or a practical difficulty it  
20 actually enhances the value of the lot because it  
21 allows you to put another story in and have a story  
22 exposed to the lake and the lake views that a person  
23 who wasn't on that kind of slope wouldn't have.

24 So rather than a practical difficulty, I  
25 think that's actually an enhancement of the lot.

1 MR. TEICHER: Did you just say you'd allow  
2 another lakeside story?

3 MS. KELLY: No.

4 MR. TEICHER: I wanted to make sure I  
5 understood.

6 MS. KELLY: I did not. I just said the  
7 slope allows one. The house and others that are on  
8 the bluff like that, very many of them have three  
9 full stories with windows exposed to the lake. So  
10 if somebody says a topography is a practical  
11 difficulty I would argue that because to me it adds  
12 value to a piece of lake property. You're not  
13 dealing with as much -- you do have issues but --  
14 runoff issues and so forth.

15 Gosh, I don't want to go through every one  
16 of these. I think some of them are captured.

17 MR. TEICHER: I would assume, Ms. Kelly,  
18 that things that we've all discussed at a separate  
19 hearing are still part of the record even if not in  
20 this hearing. I mean, I just didn't know whether  
21 you could repeat just to think that it would be in  
22 the record, because we certainly discussed these  
23 many times.

24 MS. KELLY: Yeah. That's true. I guess  
25 the other note I have is that here on the memoranda

1 from Mr. Godek dated 12-23-2008, the note I have is  
2 that the current Master Plan does not address this  
3 very important issue of aging in place and so forth.  
4 But I note again that the ZBA does not make the law,  
5 it interprets the law, and if we had a law to  
6 interpret on aging in place, we'd be happy to do so  
7 but one doesn't exist right now.

8 Okay. I had a couple of comments about I  
9 think the last letter submitted -- I just wanted to  
10 make clear Mr. Godek has stated repeatedly that he  
11 is increasing the roadside setback, and I just want  
12 to go on record as saying that is not at all the  
13 case. He wouldn't need a variance if he was  
14 increasing the roadside setback.

15 I understand the subtle difference and why  
16 you say that because you believe your cars are going  
17 to be actually farther away from the road parked in  
18 the garage than they would be parked today, but the  
19 reality of the situation is you could remove that  
20 cement and park closer to the house today without a  
21 garage. So to me that doesn't create a reason to  
22 grant this because it is, in fact, an increase of a  
23 roadside setback not a decrease. Or a decrease  
24 rather than an increase. You know what I mean.

25 CHAIRMAN BURCH: Mr. Godek, you have a

1 comment, sir?

2 MR. GODEK: Just a question. The roadside  
3 setback to my reference was very clear that the  
4 actual setback would need a variance. The setback I  
5 was referring to was vehicle setbacks.

6 MS. KELLY: Right. And I understood your  
7 distinction. But just for the record, because it's  
8 stated so many times in the record, I just wanted to  
9 make clear that distinction that I understand what  
10 you were saying, but the reality is you are  
11 decreasing the roadside setback, not increasing it.

12 I mean, your plan would increase the  
13 distance from your car to the road if you parked it  
14 in the garage but you wouldn't necessarily have to  
15 park it in the garage. And even if you did, the  
16 subsequent owners wouldn't have to park it in the  
17 garage. It is an increase of the nonconforming --

18 CHAIRMAN BURCH: Mr. Godek.

19 MR. GODEK: So we agree it does both. It  
20 increases the setback of the vehicles but there is a  
21 building setback.

22 MS. KELLY: It creates the potential that  
23 cars could be farther away from the road, parked  
24 farther away from the road than they are today. It  
25 certainly doesn't guarantee that but it does put a

1 structure closer to the road. So, I mean, we're on  
2 the same page. I wanted to make that clear so it  
3 wasn't unclear later about which direction we were  
4 going with that setback.

5 Okay. I guess with respect to the  
6 presentation at the last meeting and the references  
7 to a proposed Master Plan and an effort to gain  
8 citizen comment on that Master Plan, I mean, I did  
9 read through again Patrick's comments and I think he  
10 did do a good job of explaining where we are in that  
11 process as a township. And I think however clear  
12 our intent is to do something different with Lakes  
13 Residential Zoning, we haven't done it yet. And the  
14 Master Plan is even a full step away from the actual  
15 document, the Zoning Ordinance, that might do  
16 something about it at some point in time.

17 So I just -- again, we can't rule on a what  
18 if. We can only rule on what's in front of us and  
19 that's the ordinance today. I put here the  
20 Standards of Review for variances do not have a  
21 provision that allows approval of variances based on  
22 what the Planning Commission and Township Board  
23 might approve in the future.

24 Okay. That's all I have I think in the way  
25 of comments.

1 CHAIRMAN BURCH: Thank you, Ms. Kelly.

2 MS. KELLY: I do have a resolution I hope  
3 mostly ready to offer.

4 CHAIRMAN BURCH: Any other comments from  
5 the Board Members or the Applicants or the Public or  
6 the planning and zoning administrator before  
7 Ms. Kelly offers the resolution?

8 MR. SLOAN: No comments.

9 CHAIRMAN BURCH: Thank you, Mr. Sloan.

10 MR. GODEK: No, sir.

11 CHAIRMAN BURCH: Thank you, Mr. Godek.

12 MS. KELLY: Okay.

13 CHAIRMAN BURCH: And I'm getting unanimous  
14 negative response from the balance of The Board.  
15 Ms. Kelly, you have the floor.

16 MS. KELLY: Okay. I'll read this. It's  
17 going to take a while.

18 Whereas on July 25th, 2008 Paul and Nancy  
19 Godek filed a Notice of Appeal requesting variances  
20 from specific site development requirements of the  
21 Dexter Township Zoning Ordinance to permit  
22 construction of an attached two-car garage and  
23 second-story addition on the east side of the  
24 existing home at 9669 Portage Lake Avenue, Pinckney,  
25 Michigan 48169, parcel ID 0401181002; and whereas a

1 public hearing before the Dexter Township Zoning  
2 Board of Appeals, ZBA, was held on September 2nd,  
3 2008 and was attended by Paul and Nancy Godek,  
4 owners and Applicants; Mark Teicher and  
5 Tim McCotter, representatives of the Applicant; and  
6 Members of the Public, and application materials  
7 were received and all oral and written comments were  
8 entered into the record as summarized on -- I'm  
9 calling this Appendix A. And for reference, I guess  
10 a way of interjecting here, this is what I handed  
11 out as a summary of the current record prior to the  
12 meeting last month.

13 Appendix A, items one through three; and  
14 whereas at the September 2nd, 2008 ZBA meeting, the  
15 ZBA deemed the lot area calculation incomplete and  
16 deferred action on the application to allow  
17 sufficient time for Patrick Sloan, director of  
18 planning and zoning; and Peter Flintoft, Township  
19 Attorney, to issue opinions regarding how the  
20 ordinary high water mark should be defined and how  
21 the lot area should be calculated; and whereas in  
22 accordance with the ZBA's action at its September  
23 2nd, 2008 meeting, Sloan issued a written opinion to  
24 the ZBA on September 23rd, 2008 that clarified where  
25 the ordinary high water mark is (an elevation of

1 851.54 feet as established by the Washtenaw County  
2 Circuit Court on February 7th, 1949) and how the lot  
3 area should be calculated; and whereas at the  
4 October 7th, 2008 ZBA meeting, the ZBA supported  
5 Sloan's conclusions in his September 23rd, 2008  
6 memoranda and deferred action on the application to  
7 allow the Applicant time to produce a survey  
8 indicating the court ordered lake level of 851.54  
9 feet and to revise the lot area and lot coverage  
10 calculations accordingly; and whereas on November  
11 3rd, 2008, Paul and Nancy Godek submitted a revised  
12 survey to Dexter Township that showed a contour line  
13 of 851 feet and a lot area of 5,257 square feet; and  
14 whereas at the November 6th, 2008 ZBA meeting the  
15 ZBA deferred the application to the November 10th,  
16 2008 meeting to allow the Applicant time to obtain  
17 verification from the surveyor that the 851-foot  
18 contour line was, in fact, at an elevation of 851.54  
19 feet; and whereas at the November 10th, 2008 ZBA  
20 meeting, the ZBA deferred the application to the  
21 December 2nd, 2008 meeting since the aforementioned  
22 letter from the surveyor that was originally  
23 requested at the November 6th, 2008 meeting had not  
24 yet been received by Dexter Township; and whereas  
25 the Applicant submitted a revised survey dated

1 November 10th, 2008 prior to the December 2nd, 2008  
2 meeting that showed a contour of 851.54 feet and a  
3 lot area of 5,199 feet; and whereas based on the  
4 revised survey dated November 10th, 2008 the  
5 existing lot coverage is 1,264.2 square feet or  
6 24.32 percent and the proposed lot coverage is  
7 1,640.1 square feet or 31.55 percent lot coverage;  
8 and whereas at the December 2nd, 2008 ZBA meeting,  
9 the ZBA deliberated on the application and discussed  
10 their concerns regarding storm water management,  
11 housing for the elderly population, lot coverage and  
12 existing residential development in the neighboring  
13 Lakes Residential Area; and whereas after concluding  
14 its deliberations at the December 2nd, 2008 ZBA  
15 meeting, the ZBA deferred action on the application  
16 to the January 6th, 2009 meeting to allow time to  
17 review the draft minutes of that evening's meeting,  
18 look at other properties in the Godek's neighborhood  
19 and prepare a resolution; and whereas on  
20 January 6th, 2009 at the January 6th, 2009 ZBA  
21 meeting, action on the application was deferred with  
22 concurrence of the Applicant to February 11th, 2009  
23 to allow a new member of the ZBA (Mary Herda  
24 Sprawka) time to review the complete record for the  
25 purpose of providing the Applicant a decision

1           deliberated and voted on by a full five member ZBA;  
2           and whereas at the February 11th, 2009 ZBA meeting,  
3           the Applicant provided new written and oral  
4           testimony and action on the application was deferred  
5           to March 3rd, 2009 to allow ZBA members time to  
6           review the information presented at the meeting; and  
7           whereas per Section 19.04(B)(2) the Applicant seeks  
8           approval of construction that would result in a  
9           change in structure, foundation, footprint, profile  
10          and square footage to a legally nonconforming  
11          structure and said approval requires approval of a  
12          variance by the Zoning Board of Appeals; and whereas  
13          per Section 4.05(C)(1) of the Dexter Township Zoning  
14          Ordinance, the Zoning Board of Appeals has the  
15          authority to authorize the requested variances from  
16          site development requirements provided that all of  
17          the required findings of Section 4.05(C)(1) A  
18          through H are met and the record of the ZBA contains  
19          evidence supporting each conclusion; and whereas the  
20          application for expansion and enlargement of current  
21          legal nonconformities does not meet the standard of  
22          4.05(C)(1)(A) because there are not practical  
23          difficulties evaluated in terms of the use of the  
24          property which prevent carrying out the strict  
25          letter of the zoning ordinance, it is the finding of

1 the ZBA that, one, the Applicant acknowledged use of  
2 the property as a principal residence by filing a  
3 principal residence exemption or PRE Affidavit with  
4 the Dexter Township assessor on May 12th, 2004. The  
5 PRE has not been rescinded indicating that the  
6 property continues to be used as a year-round  
7 principal residence. The Applicant has not provided  
8 evidence to support a practical difficulty that  
9 would preclude the continued use of the property as  
10 a single-family residence.

11 Two, there is currently ample space on the  
12 property to park two cars as required by Section  
13 21.03(A)(1), and the Zoning Ordinance does not  
14 require covered parking; and whereas the application  
15 for expansion and enlargement of current legal  
16 nonconformities does not meet the standard of  
17 Section 4.05(C)(1)(B) because there is not a genuine  
18 practical difficulty due to unique circumstances or  
19 physical characteristics of the property involved or  
20 to the intended use of the property that do not  
21 generally apply to other property or uses in the  
22 Lakes Residential District, it is the finding of the  
23 ZBA that, one, the physical conditions of the  
24 Applicant's property are very common in the Lakes  
25 Residential District; 2, an increase in the level of

1 nonconformity is not required for the continued  
2 intended use of the property; 3, parking  
3 arrangements are adequate and comport with the  
4 standards of the Zoning Ordinance; 4, the slightly  
5 irregular shape of the lot is ordinary and comports  
6 with others in the neighborhood; 5, the steep  
7 topography of the lot is a desirable attribute  
8 rather than a practical difficulty because it allows  
9 additional living space that is exposed to natural  
10 light and expansive lake views; and 6, the current  
11 living area of the Godek home is very high compared  
12 to others in the Portage Lake Avenue neighborhood;  
13 whereas the conditions of the 4.05(C)(1)(c) are not  
14 met because the stated special circumstance of the  
15 desire to house an aging family member is a personal  
16 choice and therefore self created; and whereas the  
17 conditions of Section 4.05(C)(1)(d) are met because  
18 since the requested construction is intended to be  
19 placed entirely on the Applicant's property; and  
20 whereas the conditions of the Section 4.05(C)(1)(e)  
21 are not met since the requested expansion and  
22 enlargement of existing nonconformity is not in  
23 harmony with the intent of the Zoning Ordinance as  
24 stated in Section 12.02, it is the finding of the  
25 ZBA that, one, the expansion of lot coverage does

1 not comport with the intent to protect against water  
2 pollution since the increase in impervious surface  
3 is known to be a cause of degraded lake water  
4 quality; 2, the extension of the nonconforming side  
5 setback does not "assure safe and healthful  
6 conditions" for fire protection and fire suppression  
7 since the proposed expansion is less than 10 feet  
8 from the adjacent property owner's home and no  
9 extraordinary fire suppression measures have been  
10 proposed; and 3, the increase in bulk does not  
11 comport with the intent to preserve the economic and  
12 natural environmental value of water resources since  
13 it negatively impacts the lake view shed; and  
14 whereas the conditions of the Section 4.05(C)(1)(f)  
15 are not met since strict compliance with the lot  
16 coverage and setback regulations would not  
17 unreasonably prevent the owner from using the  
18 property for a permitted purpose or render  
19 conformity unnecessarily burdensome, it is the  
20 finding of the ZBA that the Applicant has in the  
21 past and is able in the future to have the full  
22 intended use of his property without the expansion  
23 and enlargement of current nonconformities; and  
24 whereas the conditions of 4.05(C)(1)(g) are met  
25 since the requested variance is not -- or excuse

1 me -- are not met since the requested variance is  
2 not the minimum amount necessary to mitigate the  
3 practical difficulty of a small lot, it is the  
4 finding of the ZBA that the Applicant's current  
5 living area is well above most homes in this  
6 neighborhood and, 2, a two-and-a-half car garage is  
7 not a requirement to have one vehicle housed outside  
8 of the elements; and whereas the conditions of  
9 Section 4.05(C)(1)(h) are met since the requested  
10 variance would not establish a use within the Lakes  
11 Residential District which is not a principal  
12 permitted use. The end.

13 CHAIRMAN BURCH: Thank you, Ms. Kelly.

14 MS. HERDA SPRAWKA: Can I hear that again?

15 CHAIRMAN BURCH: We have a resolution on  
16 the floor which The Chair is not about to reiterate.  
17 Do we have support?

18 MS. HERDA SPRAWKA: I support.

19 CHAIRMAN BURCH: Ms. Herda Sprawka supports  
20 the resolution.

21 MS. ADAMS: I support.

22 CHAIRMAN BURCH: We only need one support.

23 MS. ADAMS: Oh, I'm sorry.

24 CHAIRMAN BURCH: We will --

25 MS. KELLY: I put you all asleep, didn't I?

1                   CHAIRMAN BURCH: Pending further  
2 discussion, we'll have a roll call vote. Hearing no  
3 request for -- Ms. Kelly?

4                   MS. KELLY: May I just make a comment to  
5 Mr. Godek.

6                   This was tough one, Paul, and I sympathize  
7 completely with your thing, but I also stand by what  
8 I just said. And I think we did a thorough job. I  
9 think we gave you every opportunity to come in here  
10 and I just -- it didn't rise to the level of our  
11 standards.

12                   MR. TEICHER: I would counter that under  
13 Robert's Rules of Order there's suppose to be a vote  
14 and there's not supposed to be any commentary  
15 discussion.

16                   MS. KELLY: Oh, I see. We can't discuss  
17 what we --

18                   MR. TEICHER: Well, you already had the  
19 discussion.

20                   MS. KELLY: Oh, that's true.

21                   CHAIRMAN BURCH: Thank you, Mr. Teicher.

22                   MR. TEICHER: Not that I don't want to be  
23 here longer.

24                   MS. KELLY: I will hold my comments.  
25 Sorry.

1 CHAIRMAN BURCH: Regarding the resolution  
2 on the floor, a yes vote will be a vote to adopt the  
3 resolution, a no vote will be a vote to deny the  
4 resolution. Ms. Adams, how do you vote?

5 MS. ADAMS: Yes.

6 CHAIRMAN BURCH: Ms. Adams votes yes.  
7 Ms. Herda Sprawka, how do you vote?

8 MS. HERDA SPRAWKA: Yes.

9 CHAIRMAN BURCH: Ms. Herda Sprawka votes  
10 yes. Mr. Gajewski, how do you vote, sir?

11 MR. GAJEWSKI: No.

12 CHAIRMAN BURCH: Mr. Gajewski votes no.  
13 Ms. Kelly, how do you vote?

14 MS. KELLY: Yes.

15 CHAIRMAN BURCH: Ms. Kelly votes yes. The  
16 Chair votes yes. At a vote of four to one, the  
17 resolution is adopted.

18 MR. TEICHER: Good evening.

19 CHAIRMAN BURCH: The next item on our  
20 agenda this evening 08-ZBA-696 Brooks, 7571 Noah's  
21 Landing.

22 Mr. Sloan, would you please present to The  
23 Board this variance request?

24 MR. SLOAN: Yes. I'm just going to take a  
25 minute to find the report that I did.

1 MS. KELLY: Mr. Chair?

2 CHAIRMAN BURCH: Ms. Kelly.

3 MS. KELLY: May I take a very brief break?

4 CHAIRMAN BURCH: It has been requested that  
5 The Board take a short recess for personal reasons.  
6 We will reconvene at 8:35 p.m., five minutes from  
7 now.

8 (A brief recess was taken.)

9 CHAIRMAN BURCH: Okay. Let the record show  
10 that at 8:37 p.m. the March 3rd meeting of the  
11 Dexter Township Zoning Board of Appeals is back in  
12 session. Mr. Sloan, would you care to continue,  
13 sir.

14 MR. SLOAN: Yes. I'll start with my  
15 original report of 08-ZBA-696 and the purpose of the  
16 variance request was originally to allow for the  
17 addition of an attached uncovered 10-foot deck on  
18 the water side of the existing home at 7571 Noah's  
19 Landing. According to Section 19.04(A) of the  
20 Dexter Township Zoning Ordinance, no structure may  
21 be enlarged or altered in a way which increases its  
22 nonconformity, and Section 19.04(B)(3) states that  
23 in the case where a Zoning Board of Appeals finds a  
24 proposed increase in the nonconformity, the  
25 Applicant receive a variance.

1                   Specifically, the variances requested that  
2                   only relate to changes in the existing  
3                   nonconformities are the front yard setback variance  
4                   request on the water side. The minimum required  
5                   front yard setback is 50 feet from the water, also  
6                   50 feet from Noah's Landing. The existing front  
7                   yard setback from the home is about 19 and a half  
8                   feet from Noah's Landing and about 36 and a half  
9                   feet from North Lake.

10                   Although there are no changes to the house,  
11                   the proposed deck on the water side will reduce the  
12                   setback from North Lake to about 28 feet. The  
13                   existing front yard setbacks for the shed and well  
14                   house are about eight and a half feet and 18 and a  
15                   half feet respectively. No changes were proposed to  
16                   those two structures.

17                   Also, the minimum side yard setback is five  
18                   feet. Although the existing home is conforming, the  
19                   existing side yard setbacks for the shed and well  
20                   house are 0 and negative 2 feet respectively. No  
21                   changes are proposed to those structures. So  
22                   really, it appears that the request revolved around  
23                   the setback from the lake being reduced from 36 and  
24                   a half feet to 28 feet.

25                   The Zoning Board of Appeals originally

1 heard this request on October 7th, I believe. Let  
2 me double check the date. Yep, it was the  
3 October 7th, 2008 meeting, and there were comments  
4 from The Board, there was a public hearing and there  
5 was a motion to approve the variance as requested  
6 with a condition that the Applicant provide  
7 sufficient storm water management for the entire  
8 home.

9 That motion had failed due to lack of  
10 support. There was another motion afterward that  
11 was seconded to approve a variance for a landing of  
12 sufficient size to allow for a door swing and the  
13 max -- and a minimum of steps per current building  
14 code. And it was further stated that the required  
15 size of the landing would likely be about four foot  
16 by six foot and three steps would be required. It  
17 was also noted that it would be preferable to  
18 provide dimensions so that the exact setback  
19 variance would be known and approved. And an  
20 amendment to that motion was brought forward,  
21 forwarded and supported.

22 And the amendment to the motion on the  
23 floor was to allow 29 and a half feet for water side  
24 setback variance to provide for four by six foot  
25 landing deck with three steps to allow for a safe

1 lakeside exit from the existing home and also to  
2 recognize existing nonconformities per submitted  
3 application.

4 There was a roll call vote and the motion  
5 had passed unanimously. Again, that was the  
6 October 7th, 2008 meeting. Afterward, prior to the  
7 next Zoning Board of Appeals meeting on  
8 November 6th, 2008, the Applicant, Donald Brooks,  
9 requested in writing that a rehearing regarding his  
10 variance request be considered by the Zoning Board  
11 of Appeals. His request indicated that there were  
12 errors of omission and of facts. He had stated that  
13 letters submitted on his behalf from his neighbors  
14 were never entered into the record at the previous  
15 meeting.

16 When I gave this report, I read aloud  
17 Section 4.06 applicable Zoning Ordinance which  
18 explained under what circumstance a rehearing would  
19 be justified and the conclusion was that regardless  
20 of whether the letter or letters were received in a  
21 timely manner or at all by the Township, if the  
22 neighbors intended to comment a rehearing would be  
23 warranted. And at the time I recommended that The  
24 Board rehear the request at its December 2nd, 2008  
25 meeting. There was a motion made and supported that

1 a rehearing of the application and variance request  
2 be put on the December 2nd, 2008 Zoning Board of  
3 Appeals agenda, and that motion had carried four to  
4 zero.

5 At the December meeting, December 2nd,  
6 2008, there was a rehearing on the Brooks case, and  
7 we have recited the variance request in the record  
8 that had taken place up to that point. The  
9 application was discussed and it was concluded after  
10 the rehearing that the Zoning Board of Appeals  
11 wanted to have five members present to vote on the  
12 case.

13 I believe there were four members present  
14 at that meeting and The Board wanted to avoid a 2 to  
15 2 vote in the event a 2 to 2 vote would have  
16 happened, so they opted to defer until the  
17 March 3rd, 2009 meeting when The Board anticipated  
18 it would have five members, which it does tonight.

19 The motion was made and supported and it  
20 carried four to zero. And that brings us to  
21 tonight. Since the December 2nd, 2008 meeting, I  
22 don't believe there have been any new comments or  
23 any new information added to the record. Everything  
24 up to the point of December 2nd, 2008 I believe  
25 completes the record which includes the draft

1 December 2nd, 2008 minutes with the comments as well  
2 as any letters that have been received by neighbors.

3 And with that, I'll take any questions or  
4 comments.

5 CHAIRMAN BURCH: Thank you, Mr. Sloan. The  
6 Chair does have a couple of questions. No. 1, I  
7 don't know if everyone has the same copy of the  
8 agenda that The Chair has. This was provided to me  
9 via US mail by our recording secretary, Ms. Bolyard.  
10 But on page two of the agenda, the initial  
11 information paragraph states: The purpose of this  
12 variance request is to allow an expansion of the  
13 deck on the south side of the home. This deck was  
14 recently constructed without a zoning permit or  
15 variance.

16 If I recall this application correctly,  
17 that sentence, that statement does not in any way  
18 apply to this request; is that correct, Mr. Sloan?

19 MR. SLOAN: That's right. I don't believe  
20 there have been any decks constructed there.

21 CHAIRMAN BURCH: Okay. I wanted to clarify  
22 that because the appearance of that statement makes  
23 it very prejudicial to Mr. Brooks' request here, and  
24 in the opinion of The Chair, and I'm going to depart  
25 from the position of The Chair for the moment here,

1 and openly state my opinions on this case.

2 I think that Mr. Brooks, number one, has  
3 made an extraordinary effort to conform with both  
4 the letter and spirit of the Zoning Ordinance of  
5 Dexter Township in that he came in and requested a  
6 variance before he started construction of a deck,  
7 contrary to what we have seen so many times  
8 recently, people building additional structures then  
9 coming in and begging for forgiveness because it was  
10 done without a zoning permit or a building permit.

11 Secondly -- I've got several secondlys  
12 here. Let me try to put them in context. Secondly,  
13 I recall distinctly the discussions during our  
14 initial -- the October 7th hearing of this  
15 application in that we were concerned with storm  
16 water management, but Mr. Brooks agreed completely  
17 to ensure that the deck would be pervious, that  
18 there would not be an impact on storm water  
19 management. And if memory serves correctly,  
20 Mr. Gajewski, our resident expert on storm water  
21 management on The Board, concurred that this deck  
22 would not in any way jeopardize or increase the  
23 harmful nature of any storm water as it affected the  
24 lake.

25 Tertiarily, the neighbors in this to the

1 Brooks's have I believe unanimously supported the  
2 idea of the Brooks building a deck. I raise this --  
3 actually, there are two issues here. One, I'm quite  
4 confident that some of these neighbors may be  
5 looking out for their own futures when they want to  
6 build their own decks thinking that if we approve  
7 the Brooks' deck it will possibly make their  
8 application more acceptable when they do.

9 But whether that is the case or not, and  
10 we're talking here, we are talking a hypothetical  
11 and I don't think that we should form our opinions  
12 on this board on hypotheticals. Secondly, another  
13 very important duty of the Zoning Board of Appeals  
14 is to reflect and enforce community standards.  
15 Those standards are generally stated and published  
16 for us to go by. It's called the Zoning Ordinance,  
17 but in this case I think an exception would be  
18 justified because the neighbors unanimously have  
19 supported the Brooks' application, or stated another  
20 way, the Noah's Landing community feels that the  
21 Brooks' deck would be appropriate to their community  
22 and to their lake.

23 Having said that, I shall now open it to  
24 The Board and return to my generally recognized  
25 position as Chair. Thank you. Mr. Gajewski?

1 MR. GAJEWSKI: As Mr. Burch stated, many  
2 people build decks with no zoning permits and  
3 Mr. Brooks did not do that and should be commended  
4 for that.

5 A variance has to be the minimum amount  
6 necessary for reasonable use, so that's very  
7 subjective. Allowing for a 10-foot deck on a  
8 lakeside home to enjoy lake living is reasonable use  
9 and a 10-foot deck is very reasonable according to  
10 building standards. It allows for circulation and a  
11 piece of furniture or two. The deck is pervious so  
12 storm water is not an issue.

13 To allow only a small landing and no deck  
14 at all would be the most restrictive ideology  
15 possible. I don't agree that the Zoning Ordinance  
16 should be interpreted in the most restrictive manner  
17 possible. So the variance must be the minimum  
18 necessary for reasonable use, and you don't get much  
19 use out of a small landing. I'd define a landing as  
20 restrictive use, not reasonable use.

21 So a variance has to be the minimum  
22 necessary for reasonable use, not restrictive use.  
23 That's my comments.

24 CHAIRMAN BURCH: Thank you, Mr. Gajewski.  
25 Other Members of the Board?

1 MS. HERDA SPRAWKA: I have a question.

2 CHAIRMAN BURCH: Ms. Herda Sprawka.

3 MS. HERDA SPRAWKA: In looking at the draft  
4 minutes, it looks as though there was a unanimous  
5 decision supporting a six foot wide by four foot  
6 landing with the appropriate number of steps. It  
7 sounds as though you have changed your minds. Yours  
8 is based on neighborhood support for a deck?

9 CHAIRMAN BURCH: To remind Ms. Herda  
10 Sprawka that this was -- this issue was brought  
11 before The Board again because of the discovery of  
12 new evidence or in this case the opinion of the  
13 neighbors, which I personally was not aware of at  
14 the time I agreed or voted for the landing because I  
15 felt that -- it was my sense on The Board at that  
16 time that the landing was the best that we could get  
17 and that was without the benefit of having the  
18 neighbors's opinion which fully supported the deck.

19 So I felt that even though giving them the  
20 landing at the time was the best we could do at the  
21 time, by reopening the case I revert to my original  
22 position that I think they should get the deck that  
23 they asked for. Mr. Gajewski?

24 MR. GAJEWSKI: I just wanted to mention  
25 that the practical difficulty is the very small size

1 of the lot being only 0.11 acres.

2 CHAIRMAN BURCH: Thank you, sir. Other  
3 Members of the Board? Ms. Kelly?

4 MS. KELLY: I have gone back out there and  
5 looked at other homes on Noah's Landing and in that  
6 neighborhood and decks are not particularly  
7 uncommon. I haven't done the extensive exhaustive  
8 compilation of everybody on your street but I'm not  
9 altogether unconvinced that this might not be  
10 reasonable.

11 But I do have a question, if I may.

12 CHAIRMAN BURCH: Of course.

13 MS. KELLY: Is there any way that you would  
14 consider -- is there a reason why you wouldn't  
15 consider having steps come out of your home to a  
16 grade level deck as opposed to a raised deck? Is  
17 there a reason the raised deck is important?

18 MR. BROOKS: I'm Don Brooks. I'm the  
19 property owner at 7571 Noah's Landing. And I just  
20 feel to answer your question I think that  
21 esthetically it would not be at all pleasing to have  
22 something like that.

23 MS. KELLY: I don't necessarily disagree  
24 with you. I just wondered if that -- because if it  
25 was grade level you wouldn't even need a variance

1 for it.

2 MR. BROOKS: Uh-huh.

3 MS. KELLY: It would just be allowed. So  
4 the question comes up if a deck would be allowed of  
5 the size you want without a variance if it was at  
6 grade level, what's the big deal about putting it up  
7 a few feet? Legitimate question. And the big deal  
8 about putting it up a few feet, honestly, is that  
9 then requires a railing and it could impact the view  
10 shot of your neighbors.

11 So in this case, the additional information  
12 we do have from the neighbors indicating that they  
13 considered that and they're okay with it has maybe  
14 swayed me to the other side of the fence here. I do  
15 not think the size of the deck unreasonable at all.  
16 I do appreciate -- although I'm not swayed to  
17 approve this because you did ask for permission,  
18 although I truly appreciate it. We do have to  
19 consider the folks who don't ask with the same  
20 Standards of Review, but I'm thinking that I could  
21 be swayed.

22 MS. ADAMS: Can I ask something?

23 CHAIRMAN BURCH: Ms. Adams.

24 MS. ADAMS: The reason I voted against the  
25 deck originally and then, you know, we got into the

1 situation where we approved the landing was because,  
2 now, forgetting the direction, unlike you, Pat, I  
3 didn't revisit the property and -- but it seemed to  
4 me several doors going to the right as you look at  
5 the lake, I can't remember what direction that is,  
6 the properties got closer to the lake so there was  
7 less -- you have a fair amount of depth relatively.  
8 I believe it's like around 35 feet, but it seemed to  
9 me your neighbors to the right that where their  
10 homes were relative where to the lake's edge was got  
11 narrower. And so --

12 MS. KELLY: Two more houses?

13 MS. ADAMS: I was looking --

14 MS. KELLY: I can't remember.

15 MS. ADAMS: It seemed to me there was  
16 three. The third one out was the one I was kind of  
17 most concerned about that was without a deck, and if  
18 they then came to us now we're getting -- you know,  
19 because of the -- ideally the 50-foot lakeside  
20 setback, you know, if they were approved for a  
21 similar size deck, you know, it's getting -- to me  
22 it looked like it might get to, I don't know what,  
23 20 feet.

24 I mean, so how do we answer this concern of  
25 mine? Now, the Brooks are lovely people and it's

1 true, it is totally admirable that you've come  
2 before us. I just need help answering this in my  
3 own mind.

4 CHAIRMAN BURCH: Ms. Adams, if I may speak  
5 out of my chair for a moment.

6 MS. ADAMS: Yes.

7 CHAIRMAN BURCH: As I said earlier, I don't  
8 feel that we should be driven by hypotheticals. And  
9 the neighbors that are actually close to the lake  
10 coming and asking for a deck this size, I would  
11 consider a hypothetical, I would consider theirs on  
12 its own merits, and if they are already closer to  
13 the lake that might give me cause to feel otherwise.

14 MS. ADAMS: But where do we draw this line  
15 if we're asking for an ideal of 50 feet, and then  
16 we -- and I realize, you know, the setback for the  
17 landing relative to the deck. I mean, we're talking  
18 about a foot and a half here. What are we doing?  
19 But when we get to these properties -- which  
20 direction is that, Pat? Help me. I can't think.

21 MS. KELLY: It would be north.

22 MS. ADAMS: To the north.

23 MS. KELLY: The properties to the right as  
24 you're looking at the lake are north, correct?

25 MR. BROOKS: Correct.

1 MS. ADAMS: It seems to me they have less  
2 lakeside setback.

3 MR. BROOKS: I respectfully disagree. I  
4 think they have more. I think ours is probably the  
5 closest to the water.

6 MS. KELLY: Actually, I'm looking at the  
7 aerial and it looks like -- it looks like you could  
8 be right. Is yours -- yeah. This is the Brooks'  
9 and then this is the next house. And they --

10 MS. ADAMS: They've got more but it was  
11 this one I was looking at.

12 MS. KELLY: Yeah. That's the one that's  
13 out there on the corner. Although that is a garage,  
14 Mary, isn't it? The one on the very point,  
15 Mr. Brooks, there's two structures on that property?  
16 Am I right about that?

17 MR. BROOKS: At the very end, the point?

18 MS. KELLY: Yeah, is that Carol Cawkin's  
19 (ph.) house?

20 MR. BROOKS: Yes, it is.

21 MS. KELLY: Because Noah's Landing ends  
22 into like her driveway.

23 MR. BROOKS: Yeah, I think there's a house  
24 and a shed but --

25 MS. KELLY: Oh, all right. There is

1 another house that --

2 MS. ADAMS: Yeah. That was the one I was  
3 looking at.

4 MS. KELLY: Just south of Carol's house.  
5 I'm not sure whose house that is. But Mary's right,  
6 that one is pretty close.

7 MS. ADAMS: That is why I made the decision  
8 I did back in October. So now I'm asking my fellow  
9 members if -- and I understand, you know, if you  
10 look at the landing and the setback and the  
11 difference between the landing and the deck, and why  
12 are we quibbling because we're talking about, what,  
13 18 inches?

14 But how do we answer this person who then  
15 is getting that much closer to the lake. How do we  
16 control -- and again, I think it's highly desirable  
17 to not have man-made structures within a buffer of  
18 the lake. And I understand. I know why you want  
19 the deck. I just -- I need help here.

20 CHAIRMAN BURCH: Ms. Herda Sprawka.

21 MS. HERDA SPRAWKA: Thank you. The one  
22 thing that is interesting to me, because I didn't  
23 know this before, I didn't know that you could put  
24 something on the ground, build it as far as you  
25 wanted to all the way to the lake if you wanted to.

1 MR. GAJEWSKI: Sure.

2 MS. HERDA SPRAWKA: As long as it wasn't  
3 elevated. Those people that you're talking about  
4 hypothetically could build a patio all the way to  
5 the lake.

6 CHAIRMAN BURCH: Without a variance.

7 MS. HERDA SPRAWKA: Without a variance.

8 MS. KELLY: People can and have done that.

9 MS. HERDA SPRAWKA: So keeping something  
10 esthetically pleasing on the lake even though it  
11 does increase the nonconformity also doesn't  
12 increase I think lot coverage because it's a deck,  
13 correct?

14 MS. KELLY: Correct.

15 MS. HERDA SPRAWKA: It doesn't affect.

16 MS. KELLY: Because it's a pervious deck.

17 MS. HERDA SPRAWKA: It's impervious.

18 MS. KELLY: Pervious.

19 MS. HERDA SPRAWKA: Pervious so it -- I'm  
20 sorry, I get my perviouses and imperviouses -- so  
21 I'm looking at the potential there. I don't know if  
22 that helps you.

23 CHAIRMAN BURCH: Ms. Kelly.

24 MS. KELLY: I guess, in way of helping your  
25 dilemma here in your mind, Mary, all these wonderful

1 classes that you've gone to, and you've not gone to  
2 as many as me but you've gone to quite a few, one of  
3 the things they also stress -- we talk a lot about  
4 precedent here because when Applicants bring lawyers  
5 with them we're always worried about legal  
6 defensibility but they do tell us in class that one  
7 variance doesn't necessarily justify another.

8 I mean, and if the circumstances of this  
9 lot here that you're worried about are different,  
10 and they are -- I mean, the house is clearly way  
11 forward. There's no room for a buffer at all. I  
12 mean, I think that's kind of the answer to your  
13 question is that we aren't automatically granting a  
14 right to a home that really isn't like Mr. Brooks's  
15 home. I mean, it has some similar problems but  
16 they're not identical. And I don't think we would  
17 be compelled to grant them a deck.

18 I share your -- esthetics aside, I agree  
19 with you, a raised deck would look better coming out  
20 of your house. And your house is so tasteful and so  
21 much in scale with the neighborhood and you've done  
22 a fabulous job of putting something that really fits  
23 there. I mean, I like your house. And a raised  
24 deck I think will look better too, but I do worry  
25 about -- I wonder if the folks next to you

1 understand they're going to be looking through  
2 railings. I was looking at your windows to see if  
3 you understood you're going to be looking through  
4 railings now too.

5 MR. BROOKS: May I say something? Our  
6 neighbors to the south already have a deck. And we  
7 aren't actually looking through railings. I mean,  
8 our view is straight west to the lake and we're not  
9 looking side to side at all.

10 MS. KELLY: Then I guess none of you really  
11 are.

12 MR. BROOKS: I'd also like to say the  
13 letters of support we have from our neighbors, not  
14 only don't they have any objections to the deck but  
15 they feel it would enhance the beauty of the  
16 cottage, and I have not discussed with them at all a  
17 simple landing.

18 MS. HERDA SPRAWKA: I think it would look  
19 cute.

20 MS. KELLY: Yes, I agree it would.

21 CHAIRMAN BURCH: One at a time, please.

22 MS. KELLY: Sorry.

23 MR. SLOAN: Like with the Godeks, the only  
24 thing that I will highlight is just the checklist  
25 that I include with every report that I do. It's

1 not supposed to be binding for the person filling it  
2 out but there are areas for notes to help you along  
3 with it. That's why I put it there. So short of  
4 making any kind of recommendations, the best we can  
5 do is just point you to the standards of 4.05(C) and  
6 walk through them one by one.

7 CHAIRMAN BURCH: Thank you, Mr. Sloan.  
8 Mr. Gajewski.

9 MR. GAJEWSKI: Just to address sort of the  
10 dilemma of homes being too close to the lake. You  
11 know, in a perfect world we would like to have the  
12 water side setback at 100 feet but that's never  
13 going to happen. So the purpose of zoning is to  
14 protect health, safety and welfare.

15 So our goal is to protect water quality,  
16 and we do that by, you know, mitigating the storm  
17 water runoff. And in Mr. Brooks's case, the lot is  
18 heavily canopied with trees and vegetation to  
19 capture storm water runoff. And so I think if we --  
20 homes are going -- it's a fact of life that homes  
21 are going to be close to the lake and the only way  
22 that we can solve that dilemma is just to make sure  
23 that they mitigate their storm water with  
24 natural -- you know, vegetation, landscaping,  
25 etcetera, well canopied lot, what have you, or other

1 best management practices. So that's what I've got.

2 CHAIRMAN BURCH: Thank you, sir.

3 MS. KELLY: To that end, if I may,  
4 Mr. Burch.

5 CHAIRMAN BURCH: Ms. Kelly.

6 MS. KELLY: We were satisfied it's my  
7 recollection that storm water, we went through that.

8 CHAIRMAN BURCH: Yes.

9 MR. GAJEWSKI: Right. Well, I'm willing to  
10 offer a motion unless you want further discussion.

11 CHAIRMAN BURCH: Hearing no request of  
12 such, Mr. Gajewski, you have the floor, sir.

13 MR. GAJEWSKI: Okay. Move to approve this  
14 variance request at this rehearing and grant relief  
15 from Section 18.23(B) to allow a water side setback  
16 of 28 feet to the new deck and to recognize the lot  
17 area of less than one acre, the lot area being  
18 approximately 0.11 acres; to recognize a lot width  
19 less than 150 feet, the lot width being 49.5 feet;  
20 to recognize a front yard setback of the house less  
21 than 50 feet, approximately 19.5 feet to the house  
22 to be exact; to recognize a front yard setback of  
23 the shed and well house are less than 50 feet, it's  
24 approximately 8 and a half feet to the shed and 18  
25 and a half feet to the well house; to recognize a

1 side yard setback so the shed and well house are  
2 less than five feet, 0 to the shed and negative two  
3 the well house; and finally to recognize that the  
4 front elevation width of the house is less than 26  
5 feet. It is, in fact, 20.4 inches. And the  
6 practical difficulty is the very small size of the  
7 lot, only 0.11 acres. And that's the motion.

8 CHAIRMAN BURCH: Thank you, Mr. Gajewski.

9 MS. KELLY: I would support Mr. Gajewski's  
10 motion if we could add a few more findings to it.

11 MR. GAJEWSKI: Sure.

12 MS. KELLY: I think we have most of them on  
13 the record already.

14 MR. GAJEWSKI: Sure. I'll support your  
15 friendly amendment.

16 MS. KELLY: That we could note that this is  
17 a pervious deck, we could note also that we believe  
18 it is the minimum required for reasonable use of a  
19 deck. It's actually going to be classed as a deck.  
20 This is about as small as you can make one and make  
21 it efficient. And that we do have the support of  
22 both adjacent neighbors as to their support and  
23 concurrence that their view would not be impacted by  
24 the construction of this deck.

25 CHAIRMAN BURCH: Thank you, Ms. Kelly. It

1 is supported.

2 MR. GAJEWSKI: Uh-huh.

3 CHAIRMAN BURCH: Any further discussion?  
4 Hearing no request for same, I have rather a luxury  
5 this evening in that we have a legal stenographer.

6 Ms. Jacoby, would you please read the  
7 motion so I can bring it to a vote.

8 (Reporter read pending motion.)

9 CHAIRMAN BURCH: Thank you, Ms. Jacoby.  
10 Let me remind Members of the Board that a yes vote  
11 by roll call will be a vote to support the Brooks'  
12 variance request, a no vote would be a vote to deny.

13 Ms. Herda Sprawka, how do you vote?

14 MS. HERDA SPRAWKA: Yes.

15 CHAIRMAN BURCH: Ms. Herda Sprawka votes  
16 yes. Ms. Adams, how do you vote?

17 MS. ADAMS: Yes.

18 CHAIRMAN BURCH: Ms. Adams votes yes.

19 Mr. Gajewski, how you do you vote, sir?

20 MR. GAJEWSKI: Yes.

21 CHAIRMAN BURCH: Mr. Gajewski votes yes.

22 Ms. Kelly, how you do vote?

23 MS. KELLY: I vote yes.

24 CHAIRMAN BURCH: Ms. Kelly votes yes, and  
25 The Chair votes yes. Request is approved.

1 MR. BROOKS: I'd like to thank The Board  
2 not just for approving the variance but just for all  
3 the hard work you've done. It sure doesn't look  
4 like an easy job.

5 CHAIRMAN BURCH: We will take volunteers  
6 for The Board.

7 Next item that we have on our agenda this  
8 evening is public comment regarding any issue that  
9 anyone wishes to address to The Board.

10 Hearing none, we shall proceed to approving  
11 minutes. Ms. Kelly, you have a question?

12 MS. KELLY: In deference to the Township's  
13 shrinking budget, I would like The Chair to  
14 relieve --

15 CHAIRMAN BURCH: Okay. We can release  
16 Ms. Jacoby with one exception. I promised  
17 Ms. Jacoby earlier that I would make time for some  
18 clarification on spellings that she requested and,  
19 Ms. Jacoby, would you look those up for us?

20 (Pertinent portion of meeting concluded at 9:15 p.m.)

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CERTIFICATE

STATE OF MICHIGAN            )  
  ) SS:  
COUNTY OF OAKLAND         )

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

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

---

LAUREL A. JACOBY, CSR-5059, RPR  
Notary Public, Oakland County, Michigan  
My commission expires: 9/1/11  
Dated: This 10th day of March, 2009.