



Dexter Township

Zoning Board of Appeals

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Steve Burch,
Chair

Bill Gajewski,
Vice Chair

Pat Kelly,
Secretary

Mary Adams

Mary Herda-Sprawka

James Cormier,
Alternate

DeNette Bolyard,
Recording Secretary

REGULAR MEETING OF THE ZONING BOARD OF APPEALS

Tuesday, November 3, 2009

Members present: Steve Burch, Chair, Pat Kelly, Secretary, Mary Adams, Planning Commission Representative, and Mary Herda-Sprawka.

Absent: Bill Gajewski, Vice Chair

Also Present: Patrick Sloan, Director of Planning and Zoning (DPZ), DeNette Bolyard, Recording Secretary

I. **Call to Order:** The meeting was called to order by Chairman Burch at 7:07 p.m.

II. **Pledge of Allegiance:** Chair Burch led the Pledge of Allegiance to the Flag

III. **Approval of Agenda:**

Motion by Kelly, **support** by Herda-Sprawka to approve the agenda as read, but moving item IV - approval of Meeting Minutes to the end of the agenda. **Motion carried by voice vote.**

IV. **Approval of Meeting Minutes:**

(Moved to end of agenda.)

V. **Public Comment- Non Agenda Items:**

None.

VI. **Action Items:**

Agenda Item	1
Appeal Number:	09-ZBA-706
Property Tax ID:	04-18-100-015
Applicant Name(s):	Chris & Mary Seitz
Property Address:	7473 Noah's Landing

(The ZBA preliminarily denied this application on September 1, 2009 pending ZBA review and approval of a formal resolution, to be drafted by the DPZ with review by the township attorney, including a complete statement of facts and findings. A draft resolution distributed with October 6, 2009 ZBA Board packets was subsequently reviewed and revised by the township attorney. Additional changes were made by DPZ Sloan and the revised resolution was distributed to ZBA members at the October 6, 2009 meeting where the ZBA deferred action to allow time for additional review of the revised document.)

DPZ Sloan updated the ZBA on the status of the formal resolution drafted by him and reviewed by the township attorney; no changes have been made to the “red-line” version distributed at the October 6, 2009 meeting.

Chair Burch and Kelly read the following resolution into the record:

**Resolution for ZBA Case #09-ZBA-706
Christofer & Mary Seitz (owners and applicants)**

- A. Property Location:** 7473 Noah’s Landing, Gregory, MI 48137 (parcel 04-18-100-015), which is located on the west side (i.e., the waterfront side) of Noah’s Landing. The property is located in the LR – Lakes Residential zoning district.
- B. Proposed Work:** To ratify the construction of an attached, uncovered 6’ x 24’ deck on the south side of the existing home. This deck connects the side door to the previously permitted deck on the west side (i.e., lake side) of the home. This 6’ x 24’ deck is illustrated on the plot plan and building plans on file, and it was built in 2008 without a Zoning Permit or variance from Dexter Township.
- C. Background Information and Findings of Fact:**
1. On June 8, 2004, the ZBA approved a variance request (04-ZBA-583) from the Seitz’s to rebuild their single-family home. Included with this approval was a 15’ x 32’ deck on the waterside. The variances granted consisted of:
 - a. Section 18.23(A): A front yard setback of 33 feet from Noah’s Landing to the proposed garage.
 - b. Section 18.23(B): A front yard setback of 31 feet from North Lake to the steps of the proposed deck.
 - c. Section 12.02(E)(3)(b): A side yard setback of 7 feet from the side of the house to the southern property line.
 - d. Section 12.02(E)(3)(b): A side yard setback of 5.8’ from the side of the house to the northern lot line.
 - e. Section 12.02(E)(1): Recognition that the lot size (0.12 acres) is less than the minimum required lot size of 1 acre.
 - f. Section 12.02(E)(2): Recognition that the lot width (77.5 feet) is less than the minimum required lot width of 150 feet.
 2. On July 6, 2004, Dexter Township issued a Zoning Permit (04-ZP-4164) per the approval of 04-ZBA-583.
 3. On February 24, 2005, Dexter Township granted partial-final approval of 04-ZP-4164. This approval from Dexter Township was necessary because the owners wanted to obtain their Certificate of Occupancy from the building department, but could not install the required rain gardens due to the winter weather. Bart Hamilton, Dexter Township’s Ordinance Enforcement Officer, took five (5) pictures. One of these pictures show a 4’ x 8’ deck from the south side door, with access steps going downward in a southeasterly direction (i.e., toward the road). This deck was not approved by Dexter Township nor was it shown on the building plans of 04-ZP-4164. The entire deck was located within the minimum required side yard setback area.
 4. On May 24, 2005, Dexter Township granted complete-final approval of 04-ZP-4164 because the rain gardens had been installed. Bart Hamilton did not take pictures.

5. On July 31, 2008, Bart Hamilton observed construction of a deck on the south side of the house without a Zoning Permit. That day, Mr. Hamilton sent a "Notice of Violation" letter (Zoning Violation #08-025) to the property owners, Christofer and Mary Seitz, for constructing a deck without obtaining the required Zoning Permit. This was a violation of Section 3.03(A) of the Dexter Township Zoning Ordinance. This construction consisted of demolishing the previous 4' x 8' deck on the south side of the home and reconstructing a larger 6' x 24' deck that would extend to the existing 15' x 32' deck on the west side of the home. Both the 4' x 8' deck and the 6' x 24' deck are entirely located within the minimum required side yard setback area, in effect occupying the remaining open yard between the house and the neighboring property line.
6. On August 14, 2008, Patrick Sloan, Dexter Township's Director of Planning & Zoning, met with Mrs. Seitz to discuss Zoning Violation #08-025. Mr. Sloan advised Mrs. Seitz that they could apply to the ZBA for a variance because of the nonconforming side yard setback of the deck from the southern property line and the nonconforming front yard setback on the east side.
7. On November 6, 2008, Bart Hamilton sent a letter to Christofer and Mary Seitz that reminded them of the existing zoning violation (#08-025) and advised them to contact Dexter Township.
8. On January 6, 2009, Christofer and Mary Seitz submitted a variance application to Dexter Township. The application contained the following materials:
 - a. A completed and signed application form for Zoning Board of Appeals case #09-ZBA-706, which included the following variance requests:
 - i. Section 12.02(E)(1): To recognize that the existing lot area of 0.12 acres is less than the minimum required lot area of 1 acre.
 - ii. Section 12.02(E)(2): To recognize that the existing lot width and frontage of 44.5 feet is less than the minimum required lot width and frontage of 150 feet.
 - iii. Section 18.23(A): To recognize that the existing front yard setback of the house is less than 50 feet.
 - iv. Section 18.23(B): To recognize that the existing setback of 31 feet from the waterside deck steps to North Lake is less than the minimum required setback of 50 feet. Also, to allow further encroachment into the required 50-foot setback via the subject deck and steps. The proposed setback to the subject deck and steps is 35 feet.
 - v. Section 12.02(E): To recognize that the house's side yard setbacks of 7 feet from the southern lot line and 5.8 feet from the northern lot line are less than the minimum required setback of 11 feet. Also, to allow further encroachment into the required setback on the south side via the subject 6' x 24' deck.
 - b. A completed and signed ZBA Procedures Checklist.
 - c. A completed and signed Lot Area Coverage Calculation Form. Mr. Sloan has revised this form to reflect the best information available to the Township.
 - d. A Zoning Permit/ZBA Application Checklist that has been completed and signed by Mr. Sloan.
 - e. A mortgage survey of the applicant's property.
 - f. Building sketches of both the "current deck" (i.e., the 4' x 8' deck) and "proposed deck" (i.e., the subject 6' x 24' deck).
 - g. A letter from the applicants describing the variance request.
9. Subsequent to receipt of the completed application, a public hearing was scheduled for 7:00 p.m. on Wednesday, February 11, 2009 at Dexter Township Hall.
10. On January 26, 2009, Mr. Sloan wrote a report to the ZBA describing the applicant's request. Included with this report were:
 - a. A Variance Request Preliminary Checklist.

- b.** Pictures of the property taken by Dexter Township on February 24, 2005 and a picture of the partially constructed 6' x 24' deck taken some time in 2008.
- 11.** On January 22, 2009 a notice of the public hearing was published in the Dexter Leader and Chelsea Standard.
- 12.** On January 21, 2009 notices of the public hearing were mailed to all neighbors within 300 feet of the applicants' property line.
- 13.** At a regular meeting on Wednesday, February 11, 2009, the ZBA held a public hearing on application 09-ZBA-706. Christofer Seitz was in attendance at this meeting, and the contents of the hearing and other discussion are in the meeting minutes. Of particular significance were the following two (2) items:
 - a.** The fence of the neighbor to the south (the Sensoli's). When Mr. Hamilton's pictures were taken on February 24, 2005, this large fence did not exist. When Dexter Township took a picture of the Seitz's deck violation in 2008, the fence was there. Given the time period in which this fence was constructed, the Dexter Township Zoning Ordinance would have required a maximum height of 3 feet. The fence far exceeded this allowable height. Overall, the fence violates the following sections of the Zoning Ordinance, which include but may not be limited to:
 - i.** Section 18.18(F)(1): The finished side of a fence must face the adjacent lot. The finished side of the Sensoli fence does not face the Seitz's property.
 - ii.** Section 18.18(F)(3): The maximum allowable height of a fence on a waterfront lot in the Lakes Residential district is 3 feet. Furthermore, Section 18.18(F)(2) does not permit a residential fence to exceed 6 feet in height regardless of its location. Since the Sensoli fence exceeds 6 feet in most areas, it would not be permitted anywhere in Dexter Township.
 - iii.** Section 3.03(A): A Zoning Permit must be obtained prior to the construction of a structure, including decks and fences. Neither the Sensoli's nor the previous owners ever applied for a Zoning Permit for the fence.Therefore, because the Sensolis are the owners of this fence, they are in violation of the Zoning Ordinance. In this variance case, the Sensoli's fence is only significant because the Seitz's claim that it presents a practical difficulty to them. As an aside, Dexter Township is actively enforcing the Zoning Ordinance in regards to this fence, and recently issued civil infraction tickets to the Sensolis.
- b.** The design of the deck. There was much discussion regarding the size and design of the deck. While the applicants were reluctant to propose a smaller deck, some members of the ZBA voiced misgivings about the size, scale, and setback of the subject 6' x 24' deck.
- 14.** At the meeting on February 11, 2009, the ZBA deferred consideration of the applicants' variance request (09-ZBA-706) pending receipt of a variance request by the Sensoli's (neighbors to the south) for their fence prior to the April 2009 ZBA meeting.
- 15.** When the Sensolis had not submitted a variance request for their fence by April 2009, the ZBA placed the Seitz variance request (09-ZBA-706) on the May 5, 2009 ZBA agenda.
- 16.** At a regular meeting on May 5, 2009, the ZBA reviewed the Seitz variance request (09-ZBA-706). Christofer and Mary Seitz were in attendance at this meeting, and the contents of this item and other discussion are in the meeting minutes. Of particular significance were the following two (2) items:
 - a.** The issue of fire safety was raised by the ZBA as it relates to emergency access from Noah's Landing to North Lake via the southern side yard.

- b. The design of the deck. ZBA Member Herda-Sprawka thought that the applicants would be bringing back new plans showing alternate design options. ZBA Member Kelly stated that although she felt that the alleged access problem was self-created, she would be willing to entertain a design that allows access to the side yard similar to the “previous” 4’ x 8’ deck.
17. At the meeting on May 5, 2009, the ZBA deferred consideration of the applicants’ variance request to the June 2, 2009 meeting to allow the applicants time to get input from the Chelsea Area Fire Authority (CAFA) regarding emergency access from the road to the water through the side yard on the south.
18. At a regular meeting on June 2, 2009, the ZBA reviewed a request by the applicant to defer the variance request (09-ZBA-706) until the July or August meeting. The ZBA deferred consideration of the applicants’ variance request to the August 4, 2009 meeting.
19. At a regular meeting on August 4, 2009, the ZBA reviewed the Seitz variance request (09-ZBA-706). Christofer and Mary Seitz were in attendance at this meeting, and the contents of this item and other discussion are in the meeting minutes. The applicants previously submitted a letter from CAFA (dated June 5, 2009), which stated “...there is no more fire hazard in this circumstance than normally found in lake area homes where structures with decks and fenced yards are closer in proximity than neighborhoods that are not lake front properties. Captain Norton also felt that the deck extension actually granted better access for movement of patients on cots or backboards in the event of an EMS incident.” Although this letter addressed the issue of emergency access across the subject 6’ x 24’ deck, it did not address possible access issues with an alternative deck or no deck. At this meeting, the ZBA stated that because there were only 4 of 5 the 5 ZBA members present at the meeting, there was a smaller chance of obtaining 3 affirmative votes. In order to allow the applicants the maximum opportunity to obtain approval (i.e., having a full 5-member ZBA present), the ZBA asked the applicant, Christofer Seitz, if he would like the opportunity to defer the variance request until the September 1, 2009 ZBA meeting. Mr. Seitz requested that the application be deferred to the September 1, 2009 ZBA meeting, and the ZBA deferred it accordingly.
20. At a regular meeting on September 1, 2009, the ZBA reviewed the Seitz variance request (09-ZBA-706). The applicants read a letter into the record, and the letter is on file with Dexter Township. Christofer and Mary Seitz were in attendance at this meeting, and the contents of the letter and other discussion are in the meeting minutes. Similar to the original discussion at the February 11, 2009 meeting, there was much discussion regarding the fence of the neighbor to the south and the design of the deck. The ZBA adopted a motion to “preliminarily deny the request based primarily on the fact that there is no demonstrated practical difficulty that is not a self-created problem, pending review and approval of a formal resolution outlining a full finding of facts to be drafted by Sloan and the Township Attorney.”
- D. Standards of Review:** Per section 4.05(C)(1), the Dexter Township Zoning Board of Appeals has the authority to authorize the requested variance(s) from site development requirements provided that required findings are met and the record of the ZBA contains evidence supporting each conclusion. As such, the ZBA makes the following findings and conclusions per Section 4.05(C)(1) of the Dexter Township Zoning Ordinance:
1. Per Section 4.05(C)(1)(a), the ZBA finds that there **are not** practical difficulties which prevent carrying out the strict letter of the Zoning Ordinance. The applicants state in their original application letter, various meeting minutes, and in their letter read aloud at the September 1, 2009 meeting that the fence on south side (owned by the Sensoli’s) created a practical difficulty for access from the side door on the south side of the house to the lake on the west side of the lot.

However, the fact that an illegal fence exists does not qualify as a practical difficulty. Moreover, regardless of whether or not the neighbor to the south erects a fence (currently, the Zoning Ordinance would allow a 3-foot high fence, which would still present the same access issues that the applicants allege) there is about seven (7) feet of space between the side door on the south side of the home and the southern property line. The applicants failed to demonstrate that this 7-foot space created a practical difficulty. Finally, CAFA's letter dated June 5, 2009 does not adequately address the ZBA's concern regarding emergency access from the road to the water because it did not address possible access issues with an alternative deck or no deck. For example, emergency access across the subject deck involves going up a number of steps, across the deck, and back down a number of steps to reach the other side. This does not include any safety gates or furniture that may also be in the way. If the deck extension were removed, the steps would not be an issue and lake access would be improved regardless of whether or not the fence exists.

2. Per Section 4.05(C)(1)(b), the ZBA finds that there **are not** genuine practical difficulties because of unique circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district, and shall not be recurrent in nature. The applicants allege that the 7-foot side yard setback distance between their southern lot line (i.e., the neighbor's fence) and the side door on the south side of the house is a practical difficulty. However, because this is a result of the applicants inappropriately designing their home, the alleged practical difficulty is not a unique circumstance or physical condition in the Lakes Residential Zoning District. Furthermore, the alleged practical difficulty is recurrent in nature because it would allow any property owner who inappropriately designs his/her home to allege the same flawed practical difficulty.
3. Per Section 4.05(C)(1)(c), the ZBA finds that the alleged special conditions or circumstances **do** result from actions of the applicant. The applicants' construction not only of the subject 6' x 24' deck, but also of the previous 4' x 8' deck, were both done without the required Zoning Permits or variances. The special conditions and circumstances alleged by the applicants were a result of their own actions. When the applicants constructed their home, the door on the south side of the home was shown on the plans with no accompanying deck or steps. The location of this door was entirely at the discretion of the applicants, and Dexter Township did not regulate the placement of the door. The applicants' alleged difficulties related to ingress and egress through this door was entirely self-created. Regardless of whether or not the neighbor to the south erects a fence (currently, the Zoning Ordinance would allow a 3-foot high fence, which would still present the same access issues that the applicants allege), the applicants were well aware of the 7-foot setback distance between their side door on the south side of the house and their southern lot line. The applicants are also well aware that regardless of whether or not the fence exists, they must walk only on their own property (i.e., within this 7-foot setback area) to travel from the door to the lake.
4. Per Section 4.05(C)(1)(d), the ZBA finds that the variance requests **will** relate only to property under control of the applicant. The variance requests do relate only to the property under the control of the applicant. Again, regardless of whether or not the neighbor to the south has a fence, the variances must only relate to the property under control of the applicant. Therefore, the ZBA finds that this standard is met, as the existence of the neighbor's fence should not be a consideration in this case.
5. Per Section 4.05(C)(1)(e), the ZBA finds that the variance **will not** be in harmony with the general purpose and intent of the Zoning Ordinance and **will** cause a substantial adverse effect

upon surrounding property, property values, and the use and enjoyment of property in the neighborhood or district. As stated elsewhere in these standards of review, the existence of the neighbors' fence on the south side of the lot is not a practical difficulty. One illegal structure (i.e., the fence) on a property does not create a practical difficulty that warrants the construction of another illegal structure (i.e., the deck) on a neighboring property. A system such as this is in direct conflict with the general purpose and intent of the Zoning Ordinance, and will cause substantial adverse effects throughout Dexter Township. For example, if the Sensolis (or subsequent owners) were to remove their fence, the existence of the Seitz's large deck one (1) foot from the Sensoli's property line may cause an adverse effect on the use and enjoyment of the Sensoli property. There is also a possibility that this deck would also adversely affect the value of the Sensoli property. In this case, the Sensolis (or subsequent owners) could likewise claim that the Seitz's deck to the north is a practical difficulty and a large opaque fence is required to shield the deck from sight.

6. Per Section 4.05(C)(1)(f), the ZBA finds that the owners failed to demonstrate how strict compliance with area, setbacks, frontage, height, bulk or density would unreasonably prevent them from using the property for a permitted purpose, or how such compliance would render conformity unnecessarily burdensome. This standard is not met because the owners failed to demonstrate how strict compliance with the 7-foot side yard setbacks on the south side (as approved by the ZBA in 04-ZBA-583) would unreasonably prevent them from using the property for a permitted purpose or how such compliance would render conformity unnecessarily burdensome. The applicants never demonstrated how conforming ingress and egress (portable steps, for example) through the side door on the south side would unreasonably prevent them from using the property for a permitted purpose or how such compliance would render conformity unnecessarily burdensome.
7. Per Section 4.05(C)(1)(g), the ZBA finds that the variances requested **are not** the minimum amount necessary to overcome the alleged inequality inherent in the particular property or mitigate the alleged practical difficulty. The applicants claim that the neighbor's fence to the south creates a practical difficulty for access between the door on the south side of the applicants' house and their southern property line (i.e., the fence line). The applicants failed to demonstrate how this distance is a practical difficulty. Furthermore, the applicants failed to demonstrate how the proposed 6' x 24' deck is the minimum amount necessary to overcome this alleged practical difficulty.
8. Per Section 4.05(C)(1)(h), the ZBA finds that the variances requested **will not** permit the establishment, within the district, of any use which is not a permitted principal use within that zoning district. The existing use of the property is single-family residential, which is a principal permitted use in the Lakes Residential Zoning District. There is no proposed change to the use, so this standard is met.

E. Conclusions: A resolution was offered by Zoning Board of Appeals Member Kelly to **disapprove** the following variance requests:

1. Section 18.23(B) – To allow the subject 6' x 24' deck, which was constructed in 2008 without a Zoning Permit or a variance, to be less than the required distance of 50 feet to the ordinary high water mark of North Lake. The proposed setback is 35 feet.
2. Section 12.02(E)(3)(b) – To allow the subject 6' x 24' deck, which was constructed in 2008 without a Zoning Permit or a variance, to be less than the required distance of 11 feet to the side lot line of the southern property line. The proposed setback is 1 foot.

The resolution was supported by Zoning Board of Appeals Member Herda-Sprawka.

Roll call vote:

Kelly: YES Adams: YES Herda Sprawka: YES Burch: YES Gajewski: ABSENT

Chair Burch declared the resolution adopted.

Agenda Item	2
Appeal Number:	09-ZBA-718
Property Tax ID:	04-01-385-010
Applicant Name(s):	Steve & Carol Cafego
Property Address:	8767 Grove Road

Purpose of request:

To allow construction of a single-family home that has a nonconforming front yard setback (roadside), side yard setbacks (east side), and lot coverage that is different than that approved by the ZBA in 2001. This variance application request also includes recognition of existing nonconformities (lot area and lot width).

(This request was presented at the October 6, 2009 ZBA meeting. The ZBA heard public comment and a portion of a prepared presentation by the Cafegos, and then deferred action, with the applicant's consent, to the next available meeting.)

DPZ Sloan updated the board and the public on the status of the application.

Chair Burch invited the Cafegos to continue their presentation to the ZBA.

Carol Cafego stated that an important aspect of their request is the long running history of problems between the Cafegos and their neighbors, the Farnicks. She said the disputes date back to the 1960s and that the Farnick family has repeatedly complained to the township about the Cafego property.

Steve Cafego began to give details of specific personal incidents leading to the problems with the Farnicks. Chair Burch reminded the Cafegos and members of the public that all comments concerning the subject variance request should be limited to request.

Steve Cafego stated that the dispute with the Farnicks was relevant to the present request because the Farnicks were previously granted approval by the township to build one (1) foot from the Cafego property line based solely on the justification that the "Cafegos were bad people". Mr. Cafego stated he had documentation of his assertion in the form of a letter written by a ZBA or Township Board member. Carol Cafego described construction on the Farnick property, beginning in 1984, consisting of a fence and an addition. She stated the work had been done without permits or variances of any kind and that the township had issued a Stop Work Order (SWO) on June 18th. Steve Cafego stated that the Farnicks continued work on the structures even after the SWO. Carol Cafego presented a copy of a June 22, 1984 letter from the Washtenaw County Building Inspection Department to the Farnicks which confirmed the issuance of a SWO and an order to appear before the building department. Carol Cafego stated the Farnicks submitted a letter to the township justifying the construction of the fence and addition based on a hardship of "living next to us" (the Cafegos). She also stated that other

documentation submitted to the township by the Farnicks was incorrect or misleading and that the township never visited the site or checked out the drawings for accuracy but ultimately approved the construction. She then read into the record her transcription of a handwritten, undated and unsigned document obtained from the township's Farnick property file. The contents of the document contained the unknown author's accounting and opinion of the Zoning Board of Appeals approval of variances for the Farnick construction of a fence and addition.

The Cafegos then detailed the construction of a new deck by the Farnicks, again without permits. Mr. Cafego began a detailed account of the sale of adjacent properties in the neighborhood. Chair Burch interrupted Mr. Cafego and declared that he would not permit the continuance of the presentation of information that is of a personal nature and/or irrelevant to the application under review.

Carol Cafego stated that Mike Farnick had ordered a survey on the Cafego property in 2006. The survey determined that the new Cafego home encroached into the side setback area. Steve Cafego suggested that the Farnick survey showed an encroachment of the side setback because the property marker in the southwest corner of the Farnick property had been removed and was replaced with a new marker in a different location.

Kelly stated that members of the ZBA do not have the expertise to determine whether or not a licensed surveyor has done a good or a bad job and, therefore, the ZBA cannot determine the accuracy of the Farnick survey. She also stated that the Farnick survey is irrelevant to consideration of the requested variances since the township has not relied on it to determine the existence or extent of the side setbacks; the Farnicks have supplied their survey as evidence in the case, but the township has only relied on the Cafego mortgage survey to determine current property boundaries. Kelly suggested that the Cafegos commission a new survey of their property by another licensed surveyor if they believe the Farnick survey is incorrect.

Kelly stated that, similar to the Seitz decision earlier in the meeting, the actions of a neighboring property owner should not be considered by the ZBA as justification for the granting of a variance request. The Zoning Ordinance prescribes detailed standards of review and the ZBA is required to evaluate variance requests based only on those standards. Chair Burch concurred and reminded the Cafegos that they should present evidence supporting their request based on the standards of review outlined in the Zoning Ordinance, not based on the actions of their neighbors.

Carol Cafego stated that the road side setback of their new home is 23 feet rather than the 20 feet that approved by the ZBA in 2000.

DPZ Sloan concurred that the first-floor encroachment into the road side setback is less than that approved by the ZBA in 2000. However, portions of the second-story of the home include previously unapproved square footage that encroaches into the 50-foot road side setback. There is also additional unapproved square footage that encroaches into the previously approved 5-foot east side-yard setback.

Steve Cafego stated that the "bump-outs" were necessary due to a design change to engineered pilings but that the encroachment was relatively small (6" by 42"). The structures also hide a water management system that was not a requirement.

Carol Cafego stated that they did not realize that they are operating under an updated Zoning Ordinance and that they didn't know how the new rules would impact their request.

Kelly stated that she had no problem with the "bump-outs" because they hide a much needed storm water runoff system. She stated her problem was with the additional living area that was added over the garage. She further stated that she understands from previous testimony by the Cafegos why they added the second-floor area. However, there has not been justification by the Cafegos of why the additional area should be approved by the ZBA. Kelly asked DPZ Sloan how the ZBA should consider a Floor Area Ratio (FAR) violation when a FAR standard no longer exists in the updated 2003 Zoning Ordinance.

DPZ Sloan stated the maximum FAR allowed prior to passage of the new ordinance in 2003 was a 15%, which equaled the combined floor area of the structure divided by the square footage of the lot. The new standard of Lot Coverage (LC), set at a maximum of 25%, provides applicants more living area than the FAR standard and is easier to calculate and enforce. The approved plans that the 2000 Cafego variances were based on would have resulted in a 43.269% LC which is extremely high compared to other variance applications. If the Cafegos had completed their home, per approved plans, prior to the passage of new ordinance, their 43.269% LC would have been accepted as legally non-conforming. The Cafego home, as constructed, has a calculated LC of 43.512%.

In response to a question from Herda-Sprawka, Sloan confirmed that the added living space above the garage does not affect the LC calculation. However, it does affect setbacks, especially the front road-side setback in the Cafego case. Sloan explained that setback areas are three-dimensional spaces and that the unapproved additional cubic space added above the garage represents an extension or expansion into the front road-side setback area. Sloan added that this is why the township requires scaled building plans for zoning permits.

In response to a question by Kelly, Sloan stated that discussions with the township attorney resulted in his opinion that the township could not impose a FAR standard because it is no longer a valid standard. But, with respect to setbacks, what was built by the Cafegos within the non-conforming portions of the setbacks is different than what was on the approved plans. So, the unapproved square footage is back on the table, but it should be reviewed based on the current Zoning Ordinance.

Kelly stated that, even though the previously approved plans represented an extremely high lot coverage that would likely be denied by the ZBA under any other circumstance, the lot coverage variance currently requested represents a very small increase of only a quarter of one percent. Kelly asked members of the ZBA if it seemed reasonable to deny the lot coverage variance when the alternative required tearing off part of the house. Kelly suggested that justice in the Cafego matter might consist of remedies for the most annoying aspects of the project for the neighborhood such as the fact that the house has been under construction for 10 years and the fact that the electrical service to the house presents a safety issue.

Burch responded with the comment that, under the circumstances of the engineering challenges encountered during the construction of the Cafego home that necessitated changes to the design of the home that resulted in the small change in lot coverage, he would support allowing the variances requested if the doing so meant that the Cafegos would complete the project.

Herda-Sprawka commented that she supported the “bump-outs” due to the storm water management benefits and that the change in lot coverage is minor.

Adams stated that she is troubled by the fact that there is no boundary survey for the Cafego property and that she would prefer that the Cafegos order a survey of their property to eliminate controversy over the property lines in the future. Kelly added that this would aid the ZBA in the determination and approval of the correct setbacks.

Steve Cafego offered that he would accept the Farnick survey as valid to settle the matter. Kelly stated that the Farnick survey only identified the common property line; the survey did not include all of the Cafego property. Kelly also acknowledged that a survey commissioned by the Cafegos would more than likely be disputed, however, if the survey is completed and certified by a surveyor licensed by the State of Michigan, the ZBA would have no choice but to accept it as valid.

Chair Burch stated that he would entertain a motion to defer the Cafego matter pending receipt by the township of a survey of the Cafego property by a licensed surveyor in the State of Michigan. Kelly stated she would make the motion to defer, but she would like to hear any additional relevant comments from members of the public prior to deferring the matter.

Motion by Kelly, **support** by Adams to defer action on the Cafego request pending receipt of a sealed, certified survey of the Cafego property, with all due speed, by a surveyor licensed by the State of Michigan. **Motion carried on a voice vote.**

Chair Burch called a 10 minute recess at 8:47 p.m.

Chair Burch invited members of the public to comment on the Cafego case, noting that comments should be of a material nature and not of a personal nature.

Charles Sebastian, 8761 Grove Rd., Mr. Sebastian stated that he is still very concerned about safety issues regarding the electrical service to the Cafego home and also the Cafego’s shed that is currently located on his property.

Chair Burch assured Mr. Sebastian that his concerns would be incorporated into any final approval issued by the ZBA and that the resolution of the electrical issues would be done according to current regulations and codes.

Herda-Sprawka asked Mr. Sebastian why the electrical service has not been resolved yet. Mr. Sebastian responded that if the Cafegos connected a feeder line from the high tension wires to a meter on the house, that the line would pull the high tension wires into the Cafego house because the house is too close to the high tension wires.

Kelly asked if a potential remedy to the problem would be to run the lines underground. Mr. Sebastian stated that he didn’t know for sure, but that seven years of dealing with this issue was too long.

Kelly addressed the Cafegos and stressed to them the importance of presenting a potential solution to the electrical issue when they next appear before the ZBA. Steve Cafego stated that

he wanted the issue resolved and he was willing to pay for a solution. Kelly suggested that the Cafegos contact her to arrange a meeting with the DTE liaison to the township.

Myron Farnick, 8773 Grove Rd., Mr. Farnick commented that he would like more information about the Cafego's water heaters and he also showed the ZBA "before" and "after" photos of the "bump-outs". Mr. Farnick stated that the "bump-outs" are more extensive than indicated by the Cafegos and that he was concerned about the effect of the electrical meter and water heaters on setbacks. Kelly stated that the new Cafego survey would clear up any questions concerning the "bump-outs" and that the township does not currently regulate items such as meters and air conditioning compressors with respect to setbacks.

Kevin Radcliffe, 8755 Grove, Mr. Radcliffe offered that he had recently had a stake survey of his property done and that information may be helpful to the Cafego's surveyor.

Chair Burch declared the Cafego matter closed.

Agenda Item	3
Appeal Number:	09-ZBA-719
Property Tax ID:	04-02-403-025
Applicant Name(s):	Robert & Kathleen Lane
Property Address:	9558 Winston Drive

<p>Purpose of request: To allow construction of an attached, uncovered deck on the northeast (water) side of the existing single-family home and a 4-foot fence along the southwest and southeast sides of the property. Both the deck and fence were constructed without a Zoning Permit or variances.</p>
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Chair Burch disclosed to the ZBA that he had spoken with the applicant, Mrs. Lane, during his site visit, and that he would make reference to a portion of their conversation later in the meeting. Herda-Sprawka also disclosed site visit conversation with Mrs. Lane which was unrelated to the variances under consideration.

Chair Burch announced that, due to length, he would not read the list of persons noticed. However, the complete list is available at the township offices.

DPZ Sloan read from his report on the Lane request the following summary of background information and statement of facts:

- A. Property Location:** 9558 Winston Road (parcel 04-02-403-025), which is a lakefront parcel located on the east side of Winston Road. The parcel is located in the LR – Lakes Residential zoning district.
- B. Proposed Work:** To construct the following:
 1. An attached, uncovered 16' deep x 24' wide deck (plus a 22" wraparound step) on the east side (i.e. water side) of the existing home. The subject deck is illustrated on the plot plan, building plans, and photographs on file. It was recently constructed without a Zoning Permit or variance.
 2. A 4-foot high fence which runs as follows: from the southeast corner of the parcel westerly along the southern property line to slightly beyond the eastern property line; then northerly about 35 feet; and then easterly about 10 feet to the western wall of the existing home. The subject fence is

illustrated on the plot plan and photographs on file. It was recently constructed without a Zoning Permit or variance.

C. Background Information and Statement of Facts:

1. On July 12, 2005, the ZBA denied the variance application of Robert & Kathleen Lane (04-ZBA-602) which consisted of demolishing the single-family home, detached one-car garage, 18.3' x 34.6' building, and 16' x 18' shed, and to allow construction of a new home with an attached two-car garage and detached garage/workshop. The Lane's subsequently appealed the ZBA's decision to the Circuit Court of Washtenaw County.
2. On May 3, 2006, Judge David Swartz of the Circuit Court of Washtenaw County, ordered the following requested variances from the Zoning Ordinance (File No. 05-1079-AA):
 - a. Five (5) foot front (West) setback from Winston drive for the attached garage.
 - b. Twelve (12) foot front (East) setback from Winston drive to the detached garage.
 - c. Eighteen (18.8) foot front (South) setback from Winston drive to detached garage.
 - d. Eleven (11) foot front (West) setback from Dexter-Pinckney Road to detached garage.
 - e. Thirty (30) foot front (East) setback from Portage Lake to house.
 - f. Twenty-six (26) foot front (East) setback from Portage Lake to deck.
 - g. Twenty-four (24) foot rear (North) setback to detached garage.
3. On July 3, 2006, Dexter Township approved a Zoning Permit (06-ZP-4446) to remove the residence, 2 detached garages, and a shed, and to replace them with a new residence with an attached garage and a detached garage per the Circuit Court ruling (File No. 05-1079-AA) and related plans.
4. On September 4, 2007, Dexter Township conducted a final inspection of Zoning Permit 06-ZP-4446, and issued a Final Certificate of Zoning Compliance. The Ordinance Enforcement Officer (Bart Hamilton) took nine (9) pictures, which verified the following information:
 - a. The home, attached garage, and detached garage were constructed according to the plans.
 - b. There was no deck constructed on the east side (i.e. waterside) of the home.
 - c. At least a portion of 4-foot high white picket fence around the southwest part of the site was still in existence.
5. On August 27, 2009, Mr. Hamilton issued a Zoning Violation letter (violation #09-055) to Robert & Kathleen Lane for the following Zoning Ordinance violations:
 - a. Section 3.03(A): Installation of new structures (deck and fence) without a Zoning Permit.
 - b. Section 18.18(F)(3): The height of the fence (4 feet) exceeded the maximum allowable height for waterfront lots in the Lakes Residential District.
 - c. Section 18.18(F)(3): The fence's setback from Portage Lake (about 0 feet) was below the minimum required setback.
 - d. Circuit Court File No. 05-1079-AA (in reference to Section 18.23(B)): The deck's setback from Portage Lake (measured by Mr. Hamilton to be about 13 feet from the water line) was less than the setback of 26 feet approved by Judge Swartz.
6. On September 8, 2009, Robert and Kathleen Lane came to the Township Hall to discuss the violation with Patrick Sloan, Director of Planning & Zoning.
7. On September 30, 2009, Robert & Kathleen Lane submitted a variance application to Dexter Township. The application contained the following materials:
 - a. A signed application from for Zoning Board of Appeals case #09-ZBA-719. The specific variance requests and applicable Zoning Ordinance sections were subsequently filled in by Mr. Sloan after he reviewed the plans and visited the site to take measurements for accuracy. The application includes the following variance requests:

(drawn in green on the plot plan). This white 4-foot fence appears in subsequent pictures as recent as 2007. Because the previous 4-foot chain link fence was demolished prior to 2002 (and the current Zoning Ordinance, adopted on May 1, 2003, did not allow fences on waterfront lots to exceed 3 feet in height), any right the Lane's had to rebuild their 4-foot chain link fence was lost when the current Zoning Ordinance was adopted. However, prior to May 1, 2003, the Zoning Ordinance would have allowed the white 4-foot fence. Therefore, it became a legal nonconforming fence when the Zoning Ordinance was adopted on May 1, 2003.

- iii. A 2005 aerial photo of the property that continues to show the white 4-foot fence. Therefore, its legal nonconforming status continued.
 - iv. A collection of three (3) photographs that were in the Lanes' property file. There were several more pictures, but these 3 showed the location of the 4-foot white fence. There was a Post-It note on the pictures that read "Given to C.S. Piatt by Mrs. Lane during the summer of 2005." Mr. Piatt was the Dexter Township Zoning Administrator at that time.
 - c. The aforementioned nine (9) photos taken by Mr. Hamilton on September 4, 2007.
 - d. Nine (9) photos of the fence taken on September 29, 2009.
 - e. Twelve (12) photos of the deck and storm water management system taken on or around October 9, 2009.
10. On October 15, 2009 a notice of the public hearing was published in the Dexter Leader and Chelsea Standard.
 11. On October 19, 2009 notices of the public hearing were mailed to all neighbors within 300 feet of the applicants' property line.
 12. At a regular meeting on Tuesday, November 3, 2009, the ZBA held a public hearing on application 09-ZBA-719. The content of the hearing and other discussion will be in the meeting minutes.

In response to comments by Kelly regarding the information presented by DPZ Sloan, Chair Burch asked the applicant, Mrs. Lane, if she had seen the Sloan report. Mrs. Lane responded that she had not previously seen the document. She also stated that she had a couple of questions about the information but that it seemed pretty accurate and she had previously reviewed a lot of the information with Mr. Sloan.

Chair Burch invited Mrs. Lane to share any additional information she had with the ZBA. with additional information. Mrs. Lane made the following statements:

- The (new) fence replaced an old chain link fence.
- Mr. Ehnis (a neighbor) wrote a letter indicating his remembrance of the fence.
- The current fence is exactly where the old one was.
- The (old) fence was taken down during the building process about 2005.
- They have no pictures or surveys showing the old fence and no way to prove it was there.
- The Buckeridges own half of the new fence because it is between the properties and the Buckeridges have large dogs.
- The portion of the old fence indicated on the plot plan in purple was taken down in 2000 or 2001.

- The old white picket fence, indicated on the plot plan in green, was erected in 2000 or 2001 and removed by the builder when the new house was constructed.
- Approximately one third, or about 30 feet of the old fence closest to the road and indicated on the plot plan in red and highlighted in yellow was taken down by the lanes in 2005 because it was falling down. The balance of this fence was removed by the builder in 2007.

Kelly asked Mrs. Lane if she would dispute that the old fence indicated in red and highlighted in yellow on the plot plan is not visible on the 2002 aerial photo provided by DPZ Sloan. Mrs. Lane concurred that the fence cannot be seen in the aerial photo.

Herda-Sprawka asked Mrs. Lane if there is a rationale, other than decorative, for a 4-foot high fence. Mrs. Lane responded that the neighbors have big dogs.

Chair Burch noted that Mrs. Lane had volunteered information during his site visit about an incident when an unknown man had attempted to launch a jet ski from the Lane property. Burch stated that if the Lanes had come in and asked for a variance for a fence like the one that is there now, admitting that the fence is one foot too high, goes all the way to the lake and was built without a zoning variance, he believes the fence is appropriate if the fence were made to conform with at least stopping 6 foot from the lakeside façade of the house, especially since the neighbors have no objections, it is very attractive and is about 90% open so that it doesn't block views. He would be willing to grant the fence in this unique circumstance, the hardship being the topography of the property and the arrangement of the buildings on the property which creates an open invitation for others to use the property for launching boats or other activities.

Kelly stated that the configuration of the Lane's property was not at all unusual for a lake property and, while she would listen to all evidence provided, she could not conceive a practical difficulty that could justify allowing a fence that did not comply with the Zoning Ordinance. She also stated that the burden of proof concerning the legal non-conforming status of the old fence is with the applicant and that the available evidence fails to demonstrate that all the sections of the new fence have legal non-conforming status.

Kelly asked Mrs. Lane why the existing Buckeridge fence could not contain the Buckeridge dogs. Mrs. Lane responded that the Buckeridges would like to tear down that fence to give them more room on their small lot. Kelly noted that if the dogs were a problem, there are other methods to contain them.

Adams noted that the new fence is three-sided and doesn't completely enclose the dogs anyway.

Herda-Sprawka noted that the fence appears to be decorative only. She also stated that the fact that the fence may be an impediment to the fire department getting water from the lake in an emergency because it extends all the way to the lake. Mrs. Lane stated that the fire department would not get water from the lake because the sand would damage their pumps.

Kelly asked Mrs. Lane what practical difficulty about her property, different from other lake properties, justifies a fence that no one else is allowed to have. Mrs. Lane stated there wasn't a reason other than the fence was already there and that they had replaced exactly what was already there.

Adams noted that she is concerned about a fence that goes all the way to the lake because it might impede quick access in an emergency, especially since lakes tend to have a lot of high risk activity.

DPZ Sloan provided clarification of the regulation regarding how close to the water a fence is allowed to be in the Lakes Residential district; the lakeside of the façade of the house is used as a reference point and a fence is allowed to extend toward the lake 20% of the distance to the lake, not to exceed 20 feet. In the Lane's case, this would mean that a fence could legally extend 6.2 feet from the lakeside façade of the house toward the lake.

Kelly noted that the regulation also limits the height of the legal fence to three feet.

Mrs. Lane stated that they were very unaware that the size of their deck was a problem and she did not recall it being mentioned in conversations with former Zoning Administrator, Steve Piatt.

Kelly stated that she remembered a deck being shown on the 2005 plot plans and she considered it noteworthy at the time because it was much smaller than the deck on the home that was to be demolished. Mrs. Lane stated that the plot plan submitted in 2005 did not show a deck. Kelly stated that a deck was shown on the set of plans approved by the Court in 2005.

Mrs. Lane explained that the deck was located to avoid interference with the storm water management system at the suggestion of their builder.

Kelly stated that the Lanes were allowed by the Court Order to have a deck, but that the deck constructed was larger than the one shown on the plans. Mrs. Lane reiterated that the deck was constructed to avoid the storm water system. Kelly responded that the placement of the storm water system would be considered a self created problem and that there were other areas on the Lane property where storm water could be relocated.

Herda-Sprawka asked about the material used to construct the deck and if it was permeable. Mrs. Lane responded that the deck was constructed with composite wood with ¼ inch gaps on the decking.

Herda-Sprawka commented that conformance of the deck could be improved if the wide lower step was removed and the entire deck placed closer to the ground. Mrs. Lane responded that the deck could not be placed any closer to the ground because of concerns of the material rotting.

Kelly asked if there is a door from the house directly to the deck. Mrs. Lane responded that there is one door that exists directly to the deck.

Adams asked why a deck was built when it could have been left a grassy area.

Kelly noted that the 2005 plot plan did not show storm water storage under the deck and asked if additional storm water runoff storage area was added. Mrs. Lane responded that the storage should be the exact square footage shown on the plans and that the location of storage was dictated by the slope of the roof and location of the downspouts.

Kelly referenced a file photograph showing a large pipe emptying directly into the lake and asked Mrs. Lane if she had any idea of the source of the pipe as it looked like it could be for storm water. Mrs. Lane responded that she didn't know but that it could be something from the old cottage. Kelly stated that the pipe appeared to be new and the material was PVC. Mrs. Lane stated that they had an overflow pipe for the well for years. Chair Burch asked if there was an artesian well on the property. Mrs. Lane stated that she didn't know what was in before they owned it but she remembered a lot of rusty water coming out in the spring. She also stated that the old well was capped off and the new well was put in rather recently. Kelly stated that she would want documentation to certify the source of the water in the pipe. Mrs. Lane stated that water flowed from the pipe all the time.

The ZBA discussed the method they would use to go through the standards of review in the case. Using the document prepared by DPZ Sloan, the ZBA began the process of evaluating the Lane's request against the standards of review in the Zoning Ordinance.

Motion by Kelly, **support** by Herda-Sprawka to defer action, with the concurrence of the applicant, on the Lane application until the December meeting due to the late hour. **Motion carried on a voice vote.**

Approval of Meeting Minutes (*Moved from agenda item IV*):

Minutes from the October 6, 2009 meeting were distributed and reviewed by the ZBA.

Motion by Adams, **support** by Herda-Sprawka to approve minutes of the October 6, 2009 ZBA meeting as distributed. **Motion carried on a voice vote.**

VII. Public Comment Agenda Items - None

VIII. Concerns of Board Members, Zoning Administrator, Recording Secretary

DPZ Sloan stated that the December agenda would include a continuation of the Lanes and Howes requests as well as two new applications, one of which is actually two requests.

Chair Burch stated that he liked DPZ Sloan's new style of presentation but he would suggest that he try to revise the format for the standards of review section to make simple "yes" or "no" responses appropriate.

Kelly noted that she was uncertain at first about whether or not there was value in DPZ Sloan reading the background information of his report into the record because members of the Board have already received and reviewed the information. However, since the reading provides needed context for members of the public and also provides the opportunity for an applicant to question and/or comment about specific facts, on balance it is a good thing.

IX. Adjournment:

Motion by Kelly, **support** by Adams to adjourn the meeting. **Motion carried on a voice vote.**

Chair Burch declared the meeting adjourned at 10:46 p.m.

Respectfully submitted,

DeNette Bolyard,
Recording Secretary

Pat Kelly,
ZBA Secretary

These minutes have been approved by majority vote at the **January 5, 2010** Zoning Board of Appeals Meeting.