



DEXTER TOWNSHIP

ZONING BOARD OF APPEALS

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RECORDING SECRETARY

REGULAR MEETING OF THE ZONING BOARD OF APPEALS

Tuesday, January 10, 2006 7:30 PM

Members present: Steve Burch, Chair, Pat Kelly, Secretary, Jim Cormier, William Gajewski
Also present: Peter Flintoft, Township Attorney, Nancy McClain, Mannik & Smith Engineering Consultant, Steve Piatt, Zoning Administrator, DeNette Bolyard, Recording Secretary

The meeting was called to order by Chairman Burch at 7:34 p.m.. Chair Burch led the Pledge of Allegiance to the Flag.

Annual Election of Officers

Motion by Gajewski, support by Cormier to elect member Kelly as ZBA Secretary. **Motion Carried.**
Motion by Gajewski, support by Kelly to elect member Cormier as Vice Chairman. **Motion Carried.**
Motion by Kelly, support by Cormier to elect member Burch as Chairman. **Motion Carried.**

Agenda Item: **1**
Appeal Number: **04-ZBA-601**
Applicant Name(s): **Thomas Prose**
Property Address: **9485 Lakeview**
Property Tax ID (s): **04-06-286-001**

Variances Requested per submitted ZBA Application:				
<u>Section</u>	<u>Current</u>	<u>Requested</u>	<u>Permitted</u>	<u>Description/Notes</u>
18.23.A	--	42'	50' minimum	
18.23.A	--	10.3'	50' minimum	East side from easement to new garage
12.02.E.C.3	--	15'	30' minimum	West side
12.02.E.C.3	--	15'	30' minimum	South side
12.02.E.4	--	27.2%	25%	
Purpose: Allow destruction of existing single family home and detached two-car garage and construction of a new home with attached three car garage.				

Chair Burch announced that the applicant's attorney had submitted a letter requesting that the ZBA table the appeal to allow time for the applicant to submit required information. Motion by Gajewski, support by Cormier to table the Prose appeal until the February 14, 2006 regular ZBA meeting. **Motion carried.**

Agenda Item: **2**
Appeal Number: **05-ZBA-612**
Applicant Name(s): **Cindy White**
Property Address: **8401 Thurston**
Property Tax ID (s): **04-03-300-007**

Variances Requested per submitted ZBA Application:					
No.	Section	Current	Requested	Permitted	Description/Notes
1.	18.23.A	20'	5'	50'	From Thurston Drive to new garage overhang.
2.	18.23.A	16'	10'	50'	From the undefined easement
3.	12.02.E.3.C	14.3'			From existing home to property line on the west side.
4.	12.02.E.1				Recognize. less than one acre
5.	12.02.E.2				Recognize less than 150' wide.

Purpose: to construct a 24' x24' garage with attic storage.

Previous ZBA action:

- July 12, 2005 – motion passed to table consideration of the request for one month to allow the applicant the opportunity to research information regarding an access easement and “gap” adjacent to the property.
- August 9, 2005 – at the applicant’s request, a motion passed to table consideration of the request until September 13, 2005.
- September 13, 2005 – the applicant requested the appeal be tabled until further notice. The ZBA approved a motion to table the appeal to a date no later than January 10, 2006.

Chair Burch related the background on Ms. Whites appeal.

Ms. White submitted for the ZBAs review two documents. The first document was a surveyor’s sketch and legal description of the White parcel, including area described as “the gap”. The second document was a copy of the April 30, 1945 recorded conveyance of property from Mrs. Annabel Thurston to the Washtenaw County Road Commission. It was noted by Ms. White that the legal description of the conveyed property describes Thurston Road, a 66-foot right-of-way and may include property described previously as “the gap”. Ms. White also showed the ZBA an aerial photomap of her property. Ms. White explained that she is trying to obtain quit claim deed to the “gap” property but needs additional time.

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Motion by Kelly, support by Gajewski to table the White request until the applicant notifies the township that she is ready to be placed on a future ZBA meeting agenda. Notification to the township to occur no later than the submission deadline for application material for the July 2006 ZBA meeting. **Motion carried.**

Agenda Item: 3
 Appeal Number: 05-ZBA-614
 Applicant Name(s): Gary Ford
 Property Address: 7511 Noah’s Landing
 Gregory, MI 48137
 Property Tax ID (s): 04-18-100-020 and 04-18-100-021

Variances Requested per submitted ZBA Application:					
No.	Section	Current	Requested	Permitted	Description/Notes
1.	18.23.A	14’ 6”	18’ 6”	50’ minimum	Front (East) setback from Noah’s Landing to proposed addition
2.	18.23.B	48’	48’	50’ minimum	Extend (West) water body setback to proposed addition

Purpose: Allow for the construction of a 22’ x 26’ two story addition to the existing home.

Previous ZBA action:

- August 9, 2005 - motion passed to table consideration of the request until September 13, 2005 to allow sufficient time for the applicant to remove a shed, the Zoning Administrator to grant final zoning compliance

on the previous zoning permit and the applicant to provide a copy of the deed restrictions for the township attorney to review.

- September 13, 2005 - motion passed to table consideration of the request until the October 11, 2005 meeting with an automatic extension until the November 8, 2005 meeting, if needed.
- December 13, 2005 - motion passed to table consideration of the request until the January 10, 2006 meeting to allow the applicant time to submit a copy of a deed for his property to the township office.

Mr. Ford explained that he had submitted the requested copy of the deeds for his property. He also stated that since the addition requested as well as storm water drainage provisions for the proposed addition would be located entirely on the parcel unaffected by deed restrictions [04-18-100-020], the property in question [04-18-100-0 21] was not affected and should not be a problem in considering his request for variances.

Board Questions/Comments:

- Cormier asked the applicant if the dry well required as a condition of his previous variance approval had been installed. Mr. Ford replied yes.
- Kelly expressed concerns regarding the restrictions on the vacant lot, the size of the requested addition and the complete unavailability of off-street parking since there would only be room to park two vehicles if the addition was approved as requested.
- Gajewski questioned whether or not the vacant lot should be used in the lot coverage calculation due to the deed restrictions. Chair Burch read the deed restrictions on the vacant lot to the public. Peter Flintoft, township attorney, stated that if a deed restriction provides "the right for someone to go over the surface of the property, then the property should not be used in the lot coverage calculation".
- Kelly requested Steve Piatt, Zoning Administrator, to recalculate lot coverage of the proposed project, excluding the area of the vacant lot. Mr. Piatt reported the recalculated lot coverage as 32.5%.
- Gajewski stated that the Zoning Board of Appeals has not granted a variance from the 25% maximum lot coverage standard and that he had concerns about a lot coverage as high as 32.5%. Other board members agreed.
- Kelly stated that one lot coverage variance had been granted under the 2003 Zoning Ordinance and that it was just over the 25% threshold and less than 26%. She also stated that she could not see a practical difficulty that would permit the granting of a lot coverage variance of 32.5% since the applicant already had reasonable use of his property.
- In response to Mr. Ford's comment that he needed extra space since he no longer had a place to store tools and other items due to elimination of his shed, Cormier pointed out that Mr. Ford had requested the prior variance and agreed to the conditions of the variance that resulted in the elimination of his shed.

Public Comments:

- Mark Wawrzaszek – When Mr. Ford agreed to remove the shed when his last variance request was approved, it took him 29 months to comply. Wants to know how long an applicant has to comply.
- Mr. Holowicki - Would like to know when enough is enough. States neighbors already had to go to court regarding parking on the recreational lot and he is worried that Mr. Ford will eventually encroach on the recreational easement property.
- Frank Wawrzaszek – Was out at the cottage today and states that the floor to the shed is still on Mr. Ford's property and, despite assertions to the otherwise, the ground is not frozen and the floor to the shed could be removed. Mr. Wawrzaszek also stated that since Mr. Ford had just recently received approval to add 760 square feet of living space to his home, approval of an additional 1160 square feet is excessive.

Motion by Gajewski, support by Cormier to table the request to allow the applicant the opportunity to come back to the Board with a plan that shows less than 25% lot coverage. Applicant to turn in plans by January 18, 2006 to be on the February 14, 2006 ZBA agenda. Kelly restated that she also has a problem with the parking of the present plan.

Motion carried.

Chair Burch called a 10 minute recess at 8:20 p.m. and called the meeting back to order at 8:30 p.m.

Agenda Item **4**
Appeal Number: **05-ZBA-616**
Applicant Name(s): **John Sinanis (West Lake Hills LLC)**
Property Address: **Waterloo Road between Werkner and McKinley**
Property Tax ID (s) **04-30-300-004, 04-30-400-002, 04-31-200-008, 04-31-100-007**

Appeal Requested per submitted ZBA Application:	
<u>Section</u>	<u>Description/Notes</u>
4.04	To appeal the July 26, 2005 Planning Commission decision to deny preliminary site plan approval for West Lake Hills site condominium project. (NOTE: This appeal to be considered and governed by the 1973, as amended, Dexter Township Zoning Ordinance.)

Previous ZBA action:

- October 11, 2005 - resolution passed to remand consideration of the appeal to the Dexter Township Planning Commission to document findings of fact to support the PC's denial of the preliminary site plan and provide a written report of the findings to the ZBA.

Chair Burch explained that since the ZBA is not accustomed to administrative appeals, the township attorney, Peter Flintoft, was present to explain the ZBA's role in hearing and ruling on the appeal.

Mr. Flintoft stated that the ZBA should review the entire record "de novo", or "fresh" and "anew". Then, the ZBA must decide, based on the record and any additional evidence presented, if the applicant has persuaded the ZBA that he deserves preliminary site plan approval. Mr. Flintoft also noted that the applicant must demonstrate by a preponderance of evidence that he complied with the Zoning Ordinance and that a majority affirmative vote of the appointed members of the ZBA was required to overturn the Planning Commission decision to deny preliminary site plan approval.

Mr. Flintoft reminded the ZBA that they would be considering the appeal under the 1973 Zoning Ordinance and recommended proceeding in the following order:

- 1) Enumerate all documents in the West Lake Hills file into the record.
- 2) Applicant addresses the ZBA
- 3) ZBA members question Planning Commission members
- 4) ZBA members question members of the Public.
- 5) ZBA members call witnesses.

Chair Burch acknowledged Ms. Kate Bond of Washtenaw Engineering as present on behalf of the applicant.

Kelly enumerated into the record a description of additional documents from township records for the West Lake Hills site condominium project that were distributed to ZBA members at the meeting. (A list describing the items read into the record is included ~~in Appendix A to these minutes. Appendix A also includes a description of items previously distributed to the ZBA and other items distributed at the meeting.)~~

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Chair Burch invited Ms. Bond to address the ZBA on behalf of the applicant. Ms. Bond responded that she would like to add additional information to Washtenaw Engineering's December 15, 2005 "Response to Report of Findings of Fact". In addition, Ms. Bond noted that she would like to "set the situation" for the ZBA.

Ms Bond stated that she had met with the township planning and engineering consultants on numerous occasions in an effort to do everything possible to meet the provisions of the Zoning Ordinance and that significant time had been spent on the West Lake Hills site plans prior to the hearing at the Planning Commission.

Ms Bond's additional comments regarding the Planning Commission's findings of fact are summarized as follows:

- Finding of Fact # 1: The applicant did not represent that Waterloo Road could handle a 90 unit development. The traffic study suggested a Special Assessment District (SAD) or per unit charge for improvements to

Waterloo Road but the applicant did not hear from the township regarding these suggestions. The SAD or per unit charge were laid out again at the May 2nd meeting.

- Finding of Fact # 2: The applicant submitted a hydrogeological study and letter from the Washtenaw Engineering sanitarian that addressed this concern. The township engineering consultant “bought” the hydro study and said it met the September 2nd Planning Commission requirements.
- Finding of Fact # 3: The applicant submitted a hydrogeological study that addressed this concern. Suggests that perhaps Mannik & Smith did not have the latest information to review. In addition, reference is made to a Mannik & Smith report submitted to Washtenaw County for the Natural Areas Preservation Program that indicates this item was addressed. Three separate hydrogeo studies suggest that the Chelsea dump will have no impact on existing wells in the area.
- Finding of Fact # 4: Promises to provide cul-de-sacs were not given by the applicant or representatives. Cul-de-sacs were dismissed because the WC Road Commission frowned on them. Cul-de-sacs were dismissed later in the process because they would require a variance from township private road standards and the belief was that the required variances would not be approved.

Mr. Flintoft asked if the latest revision to the plans was May 16, 2005 and was the last review by Mannik & Smith dated July 13, 2005.

Chair Burch acknowledged John Shea, Planning Commission Chair and invited Mr. Shea to address the Board. Mr. Shea submitted for the record a memorandum, dated January 10, 2006, from Mr. Shea to the ZBA. The purpose of the memo was to reply to the applicant’s December 15, 2005 responses to the PC findings of fact. Mr. Shea stated that the West Lake Hills site plan was the first in his time on the PC that had been denied at the preliminary stage. Mr. Shea stated he felt the plan was beset with a “perfect storm” of development problems that were unique to the site and not the fault of anyone. Mr. Shea added the following comments regarding the Planning Commission’s findings of fact and the applicant’s response to the findings:

- Finding of Fact # 1: Mitigations to alleviate potential problems with Waterloo Road were “floated”, but they were not “proposed”. Real numbers and a firm plan were needed. There was disagreement among the engineering consultants (paving versus upgrades) concerning a solution to the impact from the proposed development on Waterloo Road. The record does not indicate or include any proposal from the applicant regarding Waterloo Road.
- Finding of Fact # 2: The Phase 1 hydrogeological study by Mannik & Smith referred to in Ms. Bond’s previous comments is merely a review of existing records to evaluate the property for use as parkland. The report does not address use of the property for home sites. Upon evaluation of the Phase 2 studies, Mannik & Smith were not sure that the Chelsea dump would not present a problem. In addition, surface water issues were not addressed by the applicant. Although a stormwater plan was submitted, additional study was requested due to the sensitive features of the site.
- Finding of Fact # 6: The problems with pedestrian circulation were flagged by the township consultant and should have been acted upon regardless of whether or not the Planning Commission’s September 2, 2003 resolution provided explicit direction to do so.

Board Questions/Comments:

- Burch questioned Shea if pedestrian safety was adequately addressed given the development consisted of 90 units. Shea responded that it had not been addressed to the level that Burch requested.
- Cormier asked Shea if he felt that 90 units was too many. Shea responded that the high density was one reason for the level of concern regarding the project.
- Gajewski commented that he did not believe the proposed development was in harmony with the General Development Plan due to concerns about pedestrian circulation safety, grading proposals that do not function to preserve natural grades and hydrology and the proximity of proposed septic fields to West Lake which could result in problems due to phosphorus transfer. Gajewski also questioned Nancy McClain, township engineer, with respect to surface water and groundwater. Ms. McClain answered his questions as she understood them and also stated that Walter Bolt would be available if needed for further questioning.

- Kelly questioned how does the ZBA assure that they have a complete record due to the possibility that Mannik & Smith reports may have been completed without benefit of some information. Mr. Flintoft explained that the applicant may make sure that the record is complete, but that information missing from the record must be demonstrated to have been previously submitted.

Additional comments by Ms. Bond:

- Conference meetings with township consultants and other township officials, like the one held on May 2, 2005, are important to developers and input from these meetings should not be dismissed.
- Believes the Mannik & Smith Phase 1 hydrogeologic report to Washtenaw County is valid.
- Cul-de-sacs not pursued by the applicant because the township engineer recommended against it.
- Believes it unreasonable for an applicant to discuss hard figures and details with the Planning Commission concerning special assessment districts or other mitigation plans for Waterloo Road since the PC is not the approval body.

Additional comments by Mr. Shea:

- Conference meetings are not allowed or provided for under the 1973 Zoning Ordinance. “An exchange of thoughts” was the clearly stated purpose of the May 2, 2005 conference meeting.
- The township engineer did not state that cul-de-sacs were inappropriate for the development. The last township engineering consultant report submitted that excessive cut and fill was a big problem which would suggest that cul-de-sacs were still needed.
- The Planning Commission cannot approve special assessment districts, but they can advise the Township Board. Reiterated the basic difference of opinion among consultants on paving versus not paving Waterloo Road.

Mr. Flintoft, township attorney commented on the following:

- To alleviate concerns as to over or mis-use of the proposed common use district, the creation of two separate homeowner’s associations, one that would include all homeowners with access to West Lake and the other to include homeowners without lake access, is a potential solution.
- The financing of any improvements to Waterloo Road should be based on housing units.
- The 1973 Zoning Ordinance does not provide distinction in approval standards between preliminary and final site plans.

Nancy McClain, township engineering consultant, commented on the hydrogeological study with respect to surface water and ground water.

Motion by Kelly, support by Cormier to table the appeal until the March 14, 2006 meeting to allow the applicant time to work with the township to ensure the record is complete and allow the ZBA time to review the record. After discussion by the board, Kelly amended the motion by adding the applicant must complete the review of the record by January 24, 2006. Gajewski supported the amendment. It was noted that the matter could not be placed on the February 14, 2006 meeting due to the fact that the agenda for that meeting was already full. **Motion carried.**

Motion by Kelly, support by Gajewski to adjourn the meeting at 11:15 p.m. **Motion carried.**

Respectfully submitted,

DeNette Bolyard,
Recording Secretary

Pat Kelly,
Secretary