

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

*Thursday, September 28, 2017*

2009 Township Drive

Commerce Township, Michigan 48390

**A. CALL TO ORDER:** Chairperson Rosman called the meeting to order at 7:00pm.

**ROLL CALL:** Present: Rusty Rosman, Chairperson  
Jorge Pacheco, Secretary  
Rick Sovel  
Clarence Mills  
Robert Mistele, Alternate ZBA Member  
Absent: Bill McKeever (excused)  
Also Present: Jay James, Engineer/Building Official

Chairperson Rosman introduced the Members of the Board to those present, as well as Jay James. She reviewed the requirements for receiving either a dimensional and/or sign variance from the Zoning Board of Appeals, including the fact that all standards are to be met by the applicant. She assured the applicants present that the sites of the proposed variances have been visited by the members of the Zoning Board. She also explained that if a petitioner's variance request is granted, they will receive their letter of approval by mail. It is imperative that the letter be presented when applying for a building permit. A variance is valid for 365 days from the date of the approval letter. If the variance is used, it runs with the land; however, if it is not used, it expires.

**B. APPROVAL OF MEETING AGENDA**

**MOTION** by Sovel, supported by Mistele, to approve the Zoning Board of Appeals Meeting Agenda for September 28, 2017, with items to be heard in the following order as suggested by Chairperson Rosman; *PNC first, Diez second, Kuza third, Cassar fourth, and Big Salad fifth.*

**MOTION CARRIED UNANIMOUSLY**

**C. APPROVAL OF MEETING MINUTES**

**MOTION** by Mills, supported by Pacheco, to approve the Zoning Board of Appeals Regular Meeting minutes of May 25, 2017 as presented.

Discussion -

Sovel - I was just unsure on the wording on Page 4 of 5.

Rosman - The petitioner?

Sovel - Yes, but if that's what we remember, that's fine.

Rosman - It was.

**MOTION CARRIED UNANIMOUSLY**

**D. PUBLIC DISCUSSION OF MATTERS NOT ON THE AGENDA**

Jay James noted that the ventilation fan is very loud. He asked the ZBA Members to please use their microphones as it is difficult to hear in the back of the room.

**E. UPDATE OF ACTIVITIES**

Rick Sovel – Township Board & Library

- I want to thank the other four members for serving. The other members, besides myself, they're residents of the Township just like you. They've volunteered to help serve the community.

- The Richardson Center is under major construction and will be closed for at least three months. Some of the activities are now being held in the Library and Township Hall.
- Next Tuesday we start our budget process.
- Last Saturday, we had a very successful hazardous waste collection. Once a year, the third Saturday in September of each year, we have our garbage contractor here at the Township. We have an agreement with them that you can turn in paint, hazardous materials, batteries, electronics, et cetera, so that they can be recycled and not put into a landfill. It was great weather and a good turnout.
- The Township also acquired the property at the southwest corner of Commerce and S. Commerce, across from 7-Eleven. The old rundown building there will be demolished soon. That is out for bids and should be torn down by the end of October.

**F. OLD BUSINESS:** None

**G. NEW BUSINESS:**

**ITEM G1: PA17-0008 – PNC BANK – PUBLIC HEARING**

Tracey Diehl of Expedite The Diehl representing PNC Bank of Commerce MI is requesting an exception from Article 30 of the Commerce Township Zoning Ordinance to construct a monument sign that will encroach into both front yard setbacks located at 1620 Union Lake Road. Sidwell No.: 17-01-209-007

**Chairperson Rosman opened the public hearing.**

Ms. Diehl was present to address the request. She approached the Board members and provided renderings of the proposed sign design and colors.

Ms. Diehl - I represent PNC. The proposal before you is to replace an existing monument sign that sits on the northeast corner of the property. The sign they would like to replace it with would be smaller in size and comply with the code in the same exact location, reusing the existing footings.

The sign is a 31 square foot monument, with a face of 3'x10'5", and an overall height of 4'6". Please note that this is a reduction in size. The existing sign is non-compliant. It is 6'6" in height and 6' in width, and the base is 3' in height.

If they were to construct a face replacement and replace the sign, it would continue to obstruct the view. They certainly could do that, but PNC would like to update the sign and bring it more into consistency with other PNC banks in the area.

Therefore, their request this evening is for a setback variance to allow the replacement of the ground sign to remain in its current location.

We address the exception standards, Items 1-7, as follows;

1. Construction of a face replacement would be to repair a nonconforming sign, as the existing sign does not appear to comply for the overall size allowance for a ground sign at this location. The applicant would like to replace the nonconforming sign with one that complies with the size and height allowances.
2. The newly proposed sign is lower in height, it would not obstruct the view of motorists or pedestrians. The proposed height is 4'6".

3. The construction of the conforming sign would require a setback variance. To relocate the sign would require the existing shrub and trees to be removed on the property, or the sign would not be visible in its place behind the shrubs and trees.
4. The sign does not exceed the allowable height or area.
5. The sign is aesthetically pleasing and in concurrence with the PNC Bank standards of nearby communities. The proposed sign is in compliance with the height and area allowance.
6. The exception is the minimum necessary for PNC Bank to update the sign, other than doing a direct face replacement, which would be the minimum and then we would continue to have a nonconforming sign in place. They're really trying to bring a more updated sign to the property. They could certainly do the minimum and replace the face without disturbing anything, or disturbing any landscaping, but in order to give the sign more aesthetic appeal, this is the minimum. It's going to comply with the code, the size and in the same location with the footings so as not to disturb the ground or existing treescapes.
7. The exception to the setback will not significantly impair the intent of the Zoning Ordinance. At this time, it's already in place. The existing sign is larger. Replacing it would be better for motorists. If we replaced just the face, it would continue to be a nonconforming sign, therefore a smaller sign would be able to exist in this location without any negative impact. Without the use of the variance, the applicant could continue to use the existing sign, however, they feel very strongly that the community would benefit from an upgrade, and the adjacent property owners would be happy to have an outdated sign removed.

Chairperson Rosman - Thank you. Is there anyone here from the public who would like to address this issue this evening?

There were no public comments.

Jay James - Typically when we get a sign like this, they could reface the existing sign without the need for any variance and they would be allowed to do such. This one they're actually bringing more into compliance as to the size, but they're replacing the foundation, which triggered our need to bring it to the Zoning Board of Appeals.

Chairperson Rosman - Thank you. I've checked the record and no letters were received.

**There were -0- returns and -0- letters.**

**Chairperson Rosman closed the public hearing as there were no additional questions or comments.**

**Board Comments:**

Sovel - Is it illuminated?

Ms. Diehl - Yes, it's internally illuminated.

Sovel - I have no problems.

Mistele - I don't have any problems with the sign. I think you definitely do have unique site features though that would prohibit bringing it into compliance. I think as long as we add the recommended language from the Planning Department regarding no secondary signs, I have no issues with it.

Pacheco - I don't have a problem.

Mills - I thought I heard you say it was going to be on the same foundation.

Ms. Diehl - Their intention is to attempt to use the existing footing. If the structural engineer gets into the footing and finds that they cannot use it, it would have to be replaced. When we proposed this, we had to go with the worst case scenario which is replacing the footing, but our hope is not to.

Mills - Should you have to replace the foundation, will you be lowering the elevation? It looks like there's kind of a berm that the existing sign is set on.

Ms. Diehl - They would be re-landscaping and keeping it at the position that's allowed as 4'6" above grade. If that's what you so require, then that's what they would have to comply with.

Mills - No, my question was, would the grade be lowered if you have to change the foundation.

Ms. Diehl - I think they would do as little grading as possible.

Mills - Thank you.

Chairperson Rosman - I'm delighted you're only using one sign, even though you are entitled to two.

Ms. Diehl - Yes.

Chairperson Rosman - That's wonderful, and I don't have a problem with it.

Ms. Diehl - PNC Bank is aware of that. We did research prior to the proposal, and they are willing to forfeit that sign.

Chairperson Rosman - I appreciate that, the less signs the better. You did say illuminated from the interior?

Ms. Diehl - Yes, it's internal illumination.

Jay James - The plans call out to redo the foundation. I know they would like to try to use the existing, but if they cannot, we didn't want to stop them mid-process and tell them they couldn't put it back up. So, better safe than sorry.

**MOTION** by Sovel, seconded by Pacheco, to approve, with a condition, Item PA17-0008, PNC Bank, the request by Tracey Diehl of Expedite The Diehl, representing PNC Bank of Commerce MI, for an exception from Article 30 of the Commerce Township

Zoning Ordinance to construct a monument sign that will encroach into both front yard setbacks located at 1620 Union Lake Road. Sidwell No.: 17-01-209-007

Based on the presentation and comments we have heard, I believe the applicant, Expedite The Diehl representing PNC Bank, has satisfied the standards of Section 30.09 of the Township Zoning Ordinance for granting an exception to the two required front yard setbacks for a freestanding sign along Union Lake and Cooley Lake Roads, and therefore I make a motion to approve the request for an exception of 17.0 feet relative to the front setback on Union Lake Road, and an exception of 24.0 feet relative to the front yard setback on Cooley Lake Road, requirement of Section 30.03.F of the Zoning Ordinance.

**Approval is conditional upon the following one item:**

1. No secondary freestanding sign shall be permitted unless both signs are in compliance with the Zoning Ordinance.

**MOTION CARRIED UNANIMOUSLY**

**ITEM G3: PA17-0010 – SHERRY DIEZ – PUBLIC HEARING**

Jeffrey Leib, representing Sherry Diez of Commerce MI is requesting variances from Articles 32 & 33 of the Commerce Township Zoning Ordinance to allow a shed and waterfall feature (accessory structures) in a lakeside front yard and to encroach into the wetland/lake setback located at 9015 Commerce Road. Sidwell No.: 17-11-427-029

**Chairperson Rosman opened the public hearing.**

Sherry Diez was present, along with Attorney, Jeffrey Leib, to speak to the variance request.

Mr. Leib - Sherry Diez is the owner of the home at 9015 Commerce Road. She'd certainly like to move in, but the final C of O is being upheld until we resolve this matter tonight. Our request tonight is for two variances; one to retain an existing shed behind the home, and the second is to retain an existing waterfall sculpture attached to the existing front of the home, toward the lake. Correspondingly, there are variances required for each of them because they encroach into the environmental feature or wetland setback; not the wetland itself, but the setback.

It should also be noted that the applicant had installed additional structures that were discovered when Jay came to do a final inspection for C of O and they got flagged for having these additional violations. One of them was several planter boxes, very attractive, in the rear of the home but probably within the floodplain and they've all been removed. There was a freestanding sauna to the east end of the property within the side yard that's been removed. There was another shed in front of the house on the south end of the property that was used in connection with lake activity; that was what the plan was, but that was removed.

There may be some letters saying, we don't want to look at a shed. That's probably the shed they're referring to and that has been removed. It was the one closest to the lake. The shed sought to be retained is behind the home and we believe it is elevated out of the floodplain. Because the property is actually an island parcel, it's completely surrounded by water.

Mr. Leib reviewed the parcel on the overhead, showing the canal, and the adjacent property to the north which is also owned by Ms. Diez. That portion of the property is unbuildable and unusable, and the property is actually bifurcated by the canal. He

added that it is a very unusual piece of property and it's technically impossible to comply with the Ordinance that would otherwise allow a shed. The shed cannot be located between the house and the road. The staff report shows that it is practically impossible to have a structure like this without a variance.

Mr. Leib - The shed is heavily screened with vegetation and it can't be seen from any adjacent property or from the lake. The shed is needed for this waterfront property to house water amenities, and this would be the only shed available to Ms. Diez. The waterfall sculpture feature is similarly very densely screened by vegetation, both deciduous and evergreen. It can't be seen from any neighboring properties. It's on the west side of the property. It's actually right in front of the house, it touches the house, and extends west.

The applicant's property is not only irregular in shape; as I indicated, it's an island and is bifurcated by the canal. The north end of the property is completely unusable. It is completely surrounded by wetlands. If you look at the engineering as-built plan dated August 31st, you can see how challenging the property was to use. The home is long and narrow, which matches the allowable building envelope. The parcel presents a practical difficulty that sets it apart from Ms. Diez's neighbors, and without the requested variances being granted, the applicant can't enjoy her property in the same manner as her neighbors do, and most other neighbors in the same zoning district.

Granting of the first variance will permit this low-profile waterfall feature to remain. Again, it's not seen by any neighbor and it's very screened as indicated in the staff report. The waterfall structure wasn't flagged earlier. It was just identified at the time of the inspection for the final C of O. As I indicated in my letter to you that went along with the application, Sherry retained a company called, Do-It-All Do-It-Right, of Redford, MI. She assumed that they would have pulled a building permit to put this thing in. It cost her \$36,000 and obviously they didn't pull a permit. We need a variance to be able to keep it, in terms of it encroaching into the wetland setback, the required 25'. It's totally on her property and totally screened by vegetation.

The second variance is to maintain the shed on the north side of the property. It's on an upland elevation and surrounded by vegetation, particularly on the north. It cannot be seen from the street which is north of the canal and north of the extra piece of unbuildable property. It can't be seen from the lake or by any neighbor.

Addressing the standards, granting of these variances will not cause any significant adverse impacts as a result of the practical difficulty relating to the unique configuration of the property. It's not just a minor inconvenience or a desire for a higher financial gain; it's to make her property livable and enjoyable. It's a unique piece of property, an unusual site surrounded by water, and that's why ZBA's are created. The staff report indicated, it's practically impossible to meet the Ordinance requirements.

Approval of the variance requests, in my opinion, will have no impact on any neighboring property, and will not affect the purposes or objectives of the Master Plan because of the unique situation in this case, and because of the unique configuration, there are exceptional or extraordinary circumstances that create a hardship or practical difficulty that do not generally apply to other properties in the neighborhood, or in the class of uses in the immediate area or the zoning district.

Lastly, it will not be materially detrimental to public welfare, or materially injurious to the property or improvements in the neighborhood. I want to close by indicating that Sherry shared with me a series of emails that she got, or text messages, that some people were upset as they had been used to kayaking under the bridge which is her driveway onto the property. Apparently, the DNR said you can't kayak under that bridge, just like

you can't kayak under your dock. This is private property and so some people were upset by that. It's her property and in any event, hopefully you'll understand the need for the variances in this case.

Chairperson Rosman - Thank you. Would you like to add anything this evening?

Ms. Diez - Thank you for your time. My home has also won two national awards, so that speaks for something. Michigan usually doesn't get art awards.

Chairperson Rosman - Thank you. Is there anybody here from the public who would like to address this issue this evening?

Diego Fernandez, 9005 Commerce Road - I'm the only other house on the island. I'm here to attest and confirm that from my house, and on my back deck which is elevated, I cannot see the water feature or the shed.

Chris Hill, 8497 Edgewood - This is something that's on my lake. I was talking to the gentleman at your house and he said he has a Certificate of Occupancy the other day. I'm a little confused with that.

Chairperson Rosman - Commerce Township has not yet issued the Certificate of Occupancy.

Chris Hill - Your husband said ...

Ms. Diez - I don't have a husband, and we don't live there.

Mr. Hill - Okay, well somebody said there was a Certificate of Occupancy. One of the things I'm concerned about is there is a No Trespassing sign that has been put up in the canal that goes across her property. With riparian rights, people can go anywhere on the water on the lake. If riparian rights are not honored, then because I own out to the center of the lake, I could say you can't use my part of the lake. There's people with a problem with that.

I would like to see some of the vegetation addressed. It's original growth and it could be made a lot prettier. I did notice today that the shed that was out on the lake was moved over to [Mr. Diez's] property and is now facing the canal, but that's a different story.

Andrea Goodwin, 3105 Mapledale - I had some concerns, and now I have questions hearing some of the information presented by the attorney. The location of the water feature didn't appear to be connected to the house. It seemed to be at the water's edge and that's why you needed a variance, is that correct? Can I ask questions?

Chairperson Rosman - I'm going to clarify that. When you first started, you said the water feature was attached to the house. You didn't mean that; you meant that the post was attached, or a wire or something was?

Mr. Leib - If you walk out the ... I was there a couple months ago ...

Chairperson Rosman - It's not attached to the house, is it Sherry?

Ms. Diez - There's a water feature and like a bridge that you can ...

Jay James - The water feature; this is the waterfall and this is like a canal that runs up and actually does go to the house.

Chairperson Rosman - It does, okay. There's your answer.

Ms. Goodwin - Is it on the canal side of the property?

Chairperson Rosman - It's on the north side of the property. As you are standing on the bridge, facing Ms. Diez's house, it will be to your right.

Jay James presented the aerial on the overhead and explained the location of the water feature.

Ms. Goodwin - That's what I thought. When I see the foliage there, the trees, they look like leaf trees and not evergreens. As those leaves drop in the fall, I had concerns about that. I don't know what the back side of that looks like.

Jay James presented the view of the waterfall and noted the deciduous trees, the evergreens and the canal behind it.

Ms. Goodwin - Right, and the evergreens are to the side of it where it's low. The part that crops up, my guess is that would be viewable but that's not incredibly important. It would be preferable to have greenery there.

I've seen that there have been changes. It is a beautiful house on that property, but then there's been a lot of trees, brush and foliage that's been removed around the edge of the property that it seems would be in the wetland or protected area. The beauty of that area has been changed in that way.

We noticed earlier in the season, the rebar under that bridge and into the water. That whole lake has been passable since I've lived here. We enjoy using the lake and kayaking there. I'm one of those people who likes kayaking and I like going into nooks and crannies. It seems that the entire lake would be usable; it always has been, so I wasn't understanding the restriction on that.

Chairperson Rosman - We're going to talk about that in a few minutes.

Ms. Goodwin - On the six points, I have been before your Board before for my property. You helped us with that and guided us. I reviewed the six points, and I don't see how the water feature and structures around the perimeter of the property on the water's edge fall under a hardship situation. There are no other waterfront properties in the area that have waterfront structures that haven't been there for years and years and were grandfathered in.

The property itself, I don't know how it's at a deficit. It seems that the variance, if it were allowed, would create an imbalance, actually benefiting this property above others. It seems that there are other properties, not many, but others on the lake that have similar circumstances and they don't have structures at the water's edge. The structures were built so it's a self-created situation.

Mr. Hill - I left out one thing. If you allow a structure on the water, we've got people in our subdivision that have asked to do the same thing. Once the can of worms is opened, other people will want structures and boathouses.

Karen Sherman, 3280 Edgewood Park - I don't see a hardship either. I feel like this homeowner has taken it upon herself just to do what she wanted to do, without regard to the Township and our Ordinance. I'm also an architect so I understand hardships. I did not see any kind of hardship here. I see convenience, and that she does whatever she wants to do, and then we'll deal with it later. That's not how it should be. Any reputable contractor will pull a permit. That's just part of their job. That's how it should be. I think if you do one shed, everybody else is going to want to do it. We would want to do one too, but we don't because of what it's going to do to the lake.

Carol Steffes, 3270 Edgewood Park Dr. - I like to kayak a lot. I had always gone around the one side also, and I guess now ... I understand she owns both properties, with the split in the middle there. I've always gone down there and through the split, and then down and underneath the bridge with the kayak. I've been doing that for 18 years. I just want to know if I'm still going to be allowed to do that.

Chairperson Rosman - We're going to get to that. Thank you very much.

There were -0- returns and -11- letters.

Chairperson Rosman read each letter/email into the record:

1. Liz & John Kennedy, 3244 Edgewood Park Dr., against the shed.
2. Steven Madge, 3245 Adele Terrace, against any variances for the shed and waterfall.
3. Christopher & Nancy Albers, 3170 Edgewood Park Dr., objects to the variances and to the No Trespassing sign.
4. John & Doris Breniser, not in favor of allowing any more encroachment into the lakeside.
5. Kathy Devine, Edgewood Park Dr., not in favor of disturbing wetlands or giving special permission for any circumstance that is not a necessity.
6. Nicole Olari, disapprove of the large shed and waterfall feature, accessory structures, that encroach the wetland and lake setback.
7. Dan Rose, 3229 Adele Terrace, not in support of the variance.
8. Laura Alexiou, concerned with farm animals on the Diez property, accessory structures, hazards to the lake, and changes in the landscape without proper fencing causing erosion in the canal. Not in support of shed or waterfall feature.
9. Carl Klein, 9030 Marilyn Terrace, not in favor of request to allow shed and waterfall feature; concerned with silt in the canal and no silt fences present during construction.
10. Karen Sherman, 3280 Edgewood Park, opposed to the application for variances, opposed to the shed, did not feel there was a hardship, and felt this was a convenience.
11. William Stockdale, 3147 Adele Terrace, opposed allowing variances for the shed and waterfall feature.

**Chairperson Rosman closed the public hearing as there were no additional questions or comments.**

Jay James - Concerning the wetlands, this island piece had significant wetlands on it, as well as floodplain. We've worked with Ms. Diez and her people as far as the floodplain. You are allowed to construct items in the floodplain, as long as you compensate for it somewhere else on the property.

Chairperson Rosman - In other words, moving the floodplain.

Jay James - Moving the floodplain; you're basically filling up part of a bathtub in one area for a structure, therefore you have to cut it out somewhere that's above the floodplains somewhere else on the property. We've been working with her people on that and we'll get it resolved. I think we've already come to a conclusion on that. The other item is that there were substantial wetlands on this property. During construction, I do not believe the wetlands were encroached upon, but since then, they have been. MDEQ has been notified. I tried to reach them today to get a status on that, but I was not able to get through to her. They are looking at the wetlands and they will be working with Ms. Diez for wetland restoration.

Another item was brought up earlier by someone who indicated that the shed that was down on the beach was moved to your daughter's property? If that is the case, I will be out there tomorrow because that would also need a permit, and may also face the same issues.

Ms. Diez - It's in the driveway or building area, that's where it's sitting.

Jay James - Regardless of where it's at, it would still need a permit. That's when we would look at it and determine if it can go there. I will be out tomorrow to take a look at that.

We were notified early in the construction process that under the bridge, there was some rebar that was installed to prohibit people from passing underneath the bridge. We notified Ms. Diez of this and I believe it was removed at one time, but if the rebar has shown back up, I didn't know. Jeff, you might want to speak to this as to the legality of rights to the canal. The waters of the State and any issues as to the rights of the water are actually handled by the State of Michigan; they're not handled by Commerce Township and we have no control over it. The only thing we handle is the floodplain. I do believe they've done some legal research into that and the ZBA may want to hear that for now, because I know that is one of the major concerns, even though that is not something that's being discussed tonight as far as a variance.

Chairperson Rosman - One of the people here talked about a No Trespassing sign. Is that hanging on the bridge?

Jay James - I don't know where that sign is.

Ms. Diez - I received a notice about the rebar under the bridge. There was never anything on the island before, so to get electricity, cable, there's wires and stuff on the side of the bridge. We wanted people to stop going under the bridge. Now you can't because there's no water there anyway, but before there was a little bit of water and people would hang onto the bridge and [scooch] under it in a kayak. Well now, there's

wires there and it's actually dangerous for them and dangerous for my wires. We wanted that to stop. We asked people and told people, but it didn't stop. We tried to find a way for them to stop. We didn't care that they would go all the way around to go between my two properties, so we put something under there. Someone complained to Jay, and to the MDEQ. The MDEQ contacted me, and we contacted the DNR because they're in charge of the water base. Two gentlemen came out and told me, the only people that have the rights to go by the bridge, or between the two homes ... you've seen the picture and it looks like a pond actually, and between my two properties, 9005 and 9015, which is actually myself and Diego Fernandez. The DNR said that is a private waterway because it does not go to the canal and it does not go to the lake. The DNR deemed it private waterways. I didn't, and I didn't ask for it. The only thing I asked for was for people to stop going under the bridge. He said I have to put No Trespassing signs up by law, and if someone went out there trespassing and fishing, it's criminal trespassing and the Sheriff and the DNR have to come out and enforce the law. I went to the neighborhood association and informed them, so that everyone would know. I didn't want to see a person ticketed for kayaking.

Chairperson Rosman - Did you get that all in writing?

Ms. Diez - No, but they're welcome to call the DNR and find out.

Chairperson Rosman - No, do you have that in writing from the DNR?

Ms. Diez - They did not give me anything in writing, but they said all five people in the DNR local office, and their dispatch, do know this.

Chairperson Rosman - Jay, do you think it would be a positive thing that you get a copy of that letter so you can share it when you get all the phone calls?

Jay James - I will be in contact with the DEQ and I will ask for their opinion on that.

Ms. Diez - Sue Tepatti does have the two gentlemen's names from the DNR who came out to my home.

Jay James - Sue Tepatti is the contact that I have at the DEQ, and she was the one I tried to call today concerning the wetlands. I will add that in.

I know the question is going to come up, is this something that was known by the homeowner before it was done. During the building plan process, the wetlands and floodplain were a concern and we actually had to have them revise their house plans. The original house plans did not meet the setbacks to the wetland, and the floodplain had to be compensated. The limitations were known and they were delineated on their building plans before they ever put a shovel in the dirt.

Chairperson Rosman directed the discussion to the Board members.

**Board Comments:**

Pacheco - It seems like there's an awful lot of concern about a couple of things. One is the shed, and the other one is the handling of what happened ...

Chairperson Rosman - Jorge, there are two variance requests. One is about the shed, and the other is about the water feature. That's what we're talking about right now.

Pacheco - In the whole picture ...

Chairperson Rosman - I'm not interested in the whole picture. With what everybody is saying, I understand their concerns, but our concern, this Board, is looking at those two things - the shed, and the water feature. We're not looking at the waterways, we're not looking at anything else right now.

Pacheco - What do you mean, water feature?

Chairperson Rosman - It's made out of rocks, the waterfall. Would you rather I came back to you?

Pacheco - I was there and I looked at that very carefully. I was going to propose something, but I think I'd rather hear the other comments first.

Mills - The shed that is there now, existing, and Jay maybe you can help with this; can that be relocated so that no variance is required, on that property north of the house, where the shed is located now and toward the house.

Jay James - I do not believe so because the wetland and floodplain lines run through the property.

Jay James defined the property in detail, including the wetlands and the floodplain on the overhead. He explained the setbacks and his conclusion was that he did not believe there was any location on the property where the shed could be placed in compliance with the Ordinance.

Sovel - Can you go back to the other pictures? I want to make sure I clearly understand the water feature.

Jay James brought up the waterfall feature on the overhead, and elaborated on the location, the proximity of 10' to the canal, the substantial trees and vegetation between the canal and the water feature, and the extension running up to the south side of the house.

Sovel - If it was just one or two rows of stone, would that be allowed?

Jay James - The question arises, when does it become a structure? Anything that is not flush with the ground is considered a structure, that extends into the ground and extends up more than just flush with the ground. You could have a brick paver patio and it would not be considered a structure. It would be allowed.

Sovel - How about the planters?

Jay James - I believe all of the planters have been removed.

Jay James reviewed further pictures on the overhead, showing the shed and the garden boxes, which were not permitted and have been relocated. On the south side of the residence, looking south, the other shed was shown that was removed, and there were

other planter boxes which were both in the floodplain and the wetland areas. He believes those have also been removed.

Ms. Diez - (Inaudible).

Jay James - These have not been removed?

Sovel - My question on these, because it's not flush ... if there was no stone and it was just landscaping, that would be allowed?

Jay James - The problem with this is two-fold. One is that it's in the wetland, so that would actually have to get DEQ approval. The second is that it's in the floodplain, so they've added material to the floodplain, in essence filling the floodplain. These planter boxes were also over an area that was designated on the original plan to compensate for an area of the floodplain that the house had been built in. They were supposed to dig out some of that area to create floodplain, and they actually put these planters in.

Sovel - On this aspect of it, I was under the impression that we can't give a variance for something that is controlled by the State.

Jay James - You are not here discussing the planters tonight. That is something the DEQ will address.

Sovel - On the shed, when was the shed installed?

Ms. Diez - Probably two months ago.

Sovel - When you submitted the plans, were they on the original plans?

Ms. Diez - No.

Sovel - Jay, was the house built on the site as the plans were presented?

Jay James - The house is, yes.

Sovel - Was there anything else that was part of the plans that remains to be built?

Jay James - No, not to my knowledge. I discovered all of this when I went out to do the final inspection on the house. I pulled up, pulled across the bridge and immediately asked the builder for the approved site plan.

Sovel - As far as the shed on the lake ...

Ms. Diez - That one is gone.

Jay James - Yes, this one is gone on the south side.

Sovel - As far as sheds on the lake, any shed period ... the ones that we do have, hopefully will disintegrate and not be replaced. I'm definitely not a fan of that. As far as the water feature, I have a hard time getting past the fact that this is self-created. It

looks nice, I agree with that, but I don't know how, in good conscience, to say that it wasn't self-created. It wasn't on the original plans. Why didn't they apply for a permit? It's either that they talked to someone at the Township and found out they couldn't do it, couldn't get a permit, or they just decided not to get a permit. Who pulled the permit for the house?

Ms. Diez - A different builder.

Mistele - I'll start with the shed. The Ordinance does say that lots that are on the water and the road can have one accessory structure, detached. Unfortunately this property has no road. I do believe there's a uniqueness with this property that other properties don't have. I do believe that without the variance, the applicant wouldn't be able to use their property in the same manner as others in regards to having a detached accessory structure.

In regards to the shed, I do believe there's probably a good reason that the shed could exist. Like Jay said, there isn't a really good location for that shed. I would like to have seen it farther away from the water. At the same time, there's nothing you could do on the property to put that into a better position.

As far as the water feature, I don't believe that is depriving the property owner of any uses commonly enjoyed by others, as everyone would be subject to the one accessory feature as permitted.

If you look at the location of that shed, it's in that back right corner. If that property was one piece of property and backed up to the road, that would be the road side. I don't necessarily have an issue with the shed, but the water feature, I struggle to find anything on that.

Pacheco - I had the same problems as Bob. I think the waterfall was put there with good aesthetic thinking. I don't know whether it's affecting the area, because it's a beautiful structure, and it's covered on the side by vegetation. I think anybody that goes around it and sees it, they would think it's improving the looks, but that's a personal issue.

I was debating that, if there is not the possibility ... because I think there are some things here that go to a different body than ours, to the State or ...

Chairperson Rosman - Right now, they're asking for a variance to allow it.

Pacheco - I realize that. I was wondering if it wouldn't be a good idea to postpone this until the Township and the rest of the people have a chance to see what they're doing.

Chairperson Rosman - Could you move onto the shed for a moment?

Pacheco - The shed I don't have a problem with. But I had a problem with the water feature.

Chairperson Rosman - You made the point that the water feature touches the house, so therefore, it's attached to the house, correct?

Jay James - You could make that argument.

Chairperson Rosman - If it is attached to the house, and it was not shown on the original plan for the original permit, then it's in violation of the permit, as well as the Ordinance.

Jay James - It would be in violation, yes.

Chairperson Rosman - I cannot approve the water feature because it is attached to the house, besides the fact that it is in the wetlands, so close to the canal and waterway. With regard to the shed, when you were working on the property, and Commerce Township discussed with you the wetlands and the floodplain, you were aware of where they were, and what could be built and what couldn't because you had to adjust where the house was. It is, again, my opinion that the shed, which I know you wanted, was deliberately put where you knew it couldn't go. I consider that very self-created. While I have all the empathy in the world for storage, I've said more than a hundred times sitting in this chair, if you have a need for storage, go rent storage. I do, I have a 3-car garage, and I rent storage for things that I just can't fit. It's just part of living on the lake and it just goes with it. I don't know if your home has a basement or not, I don't know how many cars you have, but with regard to the shed, I'm also going to vote no on that, because you do have options to rent a facility, or borrow somebody else's garage for whatever you put in the shed. I cannot vote for either one.

**MOTION** by Rosman, supported by Sovel, to deny Item PA17-0010, Sherry Diez, the request by Jeffrey Leib, representing Sherry Diez of Commerce MI, for variances from Articles 32 & 33 of the Commerce Township Zoning Ordinance for a shed and waterfall feature (accessory structures) in a lakeside front yard, which would also encroach into the wetland/lake setback located at 9015 Commerce Road. Sidwell No.: 17-11-427-029 Based upon the presentation and the comments that we have heard, I do not believe that the applicant has met all of the criteria for Section 41.09 of the Township Zoning Ordinance, and therefore, I move to deny the request for a variance from Section 32.02 of the Township Zoning Ordinance, because;

- A. The property can be used in the same manner that others in the same zoning district can use their property without a proposed variance;
- B. There is no unique feature of this applicant's land that doesn't apply to other land in the zoning district; i.e., lakefront and road front where people can't put sheds, and that creates a problem, and people do use storage;
- C. This problem is self-created by the applicant;
- D. The practical difficulty and hardship sought to be cured is merely an inconvenience for the applicant.

**ROLL CALL VOTE (to deny):**

**Ayes:** Rosman, Sovel, Mills, Pacheco

**Nays:** Mistele

**Absent:** McKeever

**MOTION CARRIED (4-1)**

**MOTION** by Rosman, supported by Mistele, to deny Item PA17-0010, Sherry Diez, the request by Jeffrey Leib, representing Sherry Diez of Commerce MI, for variances from Articles 32 & 33 of the Commerce Township Zoning Ordinance for a shed and waterfall feature (accessory structures) in a lakeside front yard, which would also encroach into the wetland/lake setback located at 9015 Commerce Road. Sidwell No.: 17-11-427-029 Based on the applicant's presentation and the comments I've heard, I do not believe that the applicant has met all of the criteria of Section 41.09 of the Township Zoning

Ordinance, and therefore, I move to deny the request for a variance from Section 33.01 of the Township Zoning Ordinance, because;

- A. The property can be used in the same manner that others in the same zoning district can use their property without a proposed variance;
- B. This problem is self-created by the applicant or predecessor, since the applicant was aware of where the wetlands and the floodplains were prior to contracting for the shed and the water feature.
- C. The practical difficulty and hardship sought to be cured is merely an inconvenience for the applicant.

**ROLL CALL VOTE (to deny):**

**Ayes:** Rosman, Mistele, Pacheco, Mills, Sovel

**Nays:** None

**Absent:** McKeever

**MOTION CARRIED UNANIMOUSLY**

**ITEM G4: PA17-0011 – AMER KUZA – PUBLIC HEARING**

Amer Kuza of Commerce MI is requesting a variance from Article 6 of the Commerce Township Zoning Ordinance to construct a new home and deck that will encroach into the lakeside front yard setback located at 1740 Sadie Shore.

Sidwell No.: 17-16-476-028

**Chairperson Rosman opened the public hearing.**

Amer Kuza was present to address the request.

Amer Kuza - I am here proposing a variance on the setback of a structure, not the building. I meet the building requirement setbacks. The reason for that is, on my property, the waterline jets right in and it goes right out.

As you see, I show on the site plan, where the house is, it will not distract any of my neighbors. We won't block anybody's view on the lake. As you see there on the site plan, where my house is and the deck, I don't believe it obstructs anything.

Richard Cioff, 3450 Moberly - My concern about this is that, if I understand this correctly, that they would like to be able to move closer to the lake, within the 25', is that correct?

Jay James - No, that is not correct. Our Ordinance, the setback is 25', or when you're on the lake, it's the average of the two adjacent neighbors; whatever their setbacks are from the water's edge. If you have one neighbor at 50' and another at 30', then you would be required to be 40' back. In this case, he meets the 25', but the average between the two neighbors I believe is 47'. He would be required to be setback 47', which renders the lot nearly unbuildable. The reason for his request is because we measure from the water's edge. As you can see up here on the survey, his property line actually extends out into the water. The water jets in on his property here, probably 10' or more, which makes that distance shorter, but we measure to the closest.

Mr. Cioff - I have two questions. On the assumption that that's actually water, that event is less than 5 years old. If they had actually put the seawall up, that wouldn't be there. Number 2, since his entire property is listed as wetland, I'm assuming that he already has an approval from the DEQ to build anything on that lot.

Jay James - To my knowledge, that lot is not all designated as wetland.

Mr. Cioff - I have the map from the DEQ that says it is, and the federal government says it is. I'll be happy to give it to you.

Jay James - I'll be glad to look into it, but when that whole development was built, there was allowable fill to create that development, which raised the level and took probably all of those parcels out of the wetland area. I do not believe that it is wetland.

Mr. Cioff - I'm assuming it is.

Jay James - You're looking at the maps.

Mr. Cioff - Yes, the maps that they will provide you to say that it's a wetland. On the assumption that it's not a wetland, anything that's caused that water to move in where it was drawn was the result of the activity of his predecessor; therefore, that activity of allowing it to occur negates his ability to receive a variance because it's a self-created problem. However, if he put a seawall out there, it would dry out.

Jay James - That's correct. If they were to come in and get approval from the DEQ for a seawall and fill that section of the floodplain and lake, and then were to build, it would be a different request. I don't know for sure if it would need a variance still, but I'm just saying it would be different than what's shown right now.

Mr. Cioff - The water that's there is directly across from where we live. Anything that's on our property at 3450 Moberly was declared 30 years ago as private water and private dirt, and is not public water. That decision went to courts and has been in place for over 30 years, so our feeling is that we're not interested in that water being on his land, but the guy that he has a land contract from, Seth Norman, didn't care. He allowed the water to drift onto that property, and made no attempt to do that. When he entered into a land contract with this gentlemen, the responsibility, because Norman didn't care, he's the predecessor, and therefore his ability to move forward doesn't exist because his problem is the result of Seth Norman's activity.

Eric Koppin, 1770 Sadie Shore Dr. - I am going to be a new resident, in the not too distant future, in Island Club, so I had a few questions. Understanding that there are some challenges on that parcel of land, having looked at it myself, my question to you, Jay, is if there was a variance and Mr. Kuza was able to build farther back than what is generally allowed by the Township, the back side of his home, or deck, would that be protruding out significantly from Lou, the neighbor to the left.

Jay James - As you look at the lake?

Mr. Koppin - Yes.

Jay James - On this plan here, this is the lakeside edge of his house. Here is the corner of the house to the right. If you draw a line between those two points, he's behind both of those, but as compared to the water's edge, he is not.

Mr. Koppin - My only other concern would be if there would be an adjacent structure, living on the canal side, and having a limited lake view, which I hold so dearly, to make sure that whatever Mr. Kuza does decide to put in, i.e. a deck, or any other structure like that, would not protrude farther to limit my already limited view of the water.

Jay James - This area that is hatched in here, that is the area of a proposed deck that does extend out past the line between the two houses. That is part of what he's here asking for.

Mr. Koppin - Okay, that is my only concern for the Board to take a look at. Not so much with his property. Obviously the lot has its own challenges and I wish him well, but I am concerned about my limited and obstructed view.

Jay James brought up the map on the overhead and reviewed Mr. Koppin's house in relation to Mr. Kuza's. He explained that he didn't think Mr. Koppin would even see the house or deck.

Mr. Koppin - I do have a balcony off the master bedroom, and I can see the lake past Lou's backyard.

Jay James - I don't think you'll be obstructed by this.

Penny Steyer, 3450 Moberly - I reside across from this property. I have an interest in the history of these particular properties, so I take the time to look and see what the dimensions of these properties were. They have been changed significantly over the course of the years, just as the last lady's property had changed from 1960 to be bifurcated.

I know the overlays are not accurate, but you can see that was approved for re-platting for the second phase in September 1999. The original platting of the condo was in 1989. The erosion that seems to be existing; you can see in 1990, there's none from the original plat. In 2008, it's the same. In 1963, there's no water there at all. The particular dimensions of this property and the alterations that have occurred are the result of the developer choosing not to seawall the property and protect it from water seeping on or eroding. Since that's a predecessor I consider that to be a self-created problem by not protecting the land. As Richard has stated, that's just the map for you Jay if you want to look at the wetland.

The plat was approved with the same dimensions. In fact, I believe there is a common element at the edge of the property and it's not the ownership of the individual condo unit owners. If you look on the original plat, there's very little land that is eroding. I don't understand how choosing to go beyond what you can do, what was an approved plat, I don't see any reasoning for that. The desire to encroach beyond what the Ordinance says is, for me and my view, a convenience as opposed to a necessity.

Mark Masson, 3412 Circle Dr. - I'm here more as a representative of the board. Even though I live in that sub, this situation wouldn't personally affect me, but I do have some concerns.

Number 1, I've noticed that they've been bringing in a lot of fill dirt and pushing it towards the water, essentially filling the water in. The other thing I was concerned about; he's building outside of the envelope that was originally established by the developer. If you approve it, then we have to amend it. According to our legal counsel,

we would have issues. If we make an amendment, it's creating a precedent. That lot was passed on by many people before because it's a very challenging lot to build within the envelope. I don't know if this is a concern of your board, but I have a concern with the fact that he is putting dirt into the water.

Chairperson Rosman - Thank you. That's an issue for Jay.

Jay James - Yes, and I'll go out and take a look at it. I was not aware they were bringing any fill in yet. If he is, and soil erosion may be going into the water.

Mr. Masson - The other concern was I don't see a stairway on that deck. I wondered if that was going to go even closer to the water.

**There were -4- returns and -0- letters.**

**Chairperson Rosman closed the public hearing as there were no additional questions or comments.**

**Board Comments:**

Chairperson Rosman - I did ask the Planning Department to look back on Google Earth to see what the land looked like. As far back as she was able to see was '99, and it looked exactly the same as it does now.

Jay James - Yes, this all occurred before then. I was not here when that occurred, but it was my understanding that substantial fill was brought in to create the Island Club development.

Chairperson Rosman - That's true. Bob, your turn.

Mistele - Have you guys looked at pushing forward? We can't push that house forward on the lot at all? There's no way to ...

Jay James - When you say forward on the lot, Bob, you mean towards the road?

Mistele - Yes, toward the road.

Jay James - No, he's already at the minimum of 25'.

Mistele - Okay. The big concern I do have is the deck. I know the Planning Department recommended maybe putting in low visibility railings. If approved, I would want to see us maybe prohibit railings, and put just a patio with no structure deck. The deck would interfere with people's sightlines. With a patio, you're at least keeping it tight to the ground.

Sovel - I don't have a problem from the road setback. We've approved many of these over the years, and then people come back and say, everyone else has a deck, I don't have a deck. Whatever ends up happening, deck or no deck, or a balcony also, I'd like to make sure that the Building Department and the Planning Department know that it will be on the condition of no further variances on this property in the future. Whatever

is being done, you get one shot at it and you will live with it forever. I do have one other question; on the staking, what did the pink stakes mean?

Mr. Kuza - That is where the house is going to be.

Sovel - Jay, next to the other house, it looks like it's maybe 2' from the edge of where the silt fence is.

Mr. Kuza - On the other side of the fence? Those were the property lines. But where they sprayed ...

Sovel - It looked like an L.

Jay James - That was the property line. The silt fence is located inside the property line, and the property line stakes would be outside the silt fence.

Sovel - What are the side setbacks?

Jay James - On his proposed house, they're 7' and 7.1'.

Sovel - Okay.

Mills - One, my concern is that I think your house could be built without a deck. I see what you're asking for. Two, the other thing I sensed is that your house could be made smaller if you wanted a deck, and it would be able to meet the Ordinance. I have a problem with putting a deck out there.

Pacheco - What we're looking at here in the plans, is that different than what you have on the overhead? I don't think it showed the deck on mine.

Jay James clarified the area of the deck, which was hatched on the plans with a different type of cross hatching. He added that Jorge is correct, and it was hatched differently on the paper plans.

Pacheco - Okay, I see it now. It's a lot clearer there. That was in the review?

Jay James - It is, because the deck is still setback 25' from the water's edge, but because of the shape of the shore; I think the question for the deck is does it impede any vision of the neighbors. I think that's why that is on there and it's one of the reasons for his request.

Chairperson Rosman - How many square feet is the whole house, and what is the minimum required?

Jay James - It's a 3,000 square foot house, and I believe in R1-D, 1,200 is the minimum.

Chairperson Rosman - My biggest concern is two-fold and I'm talking lakeside only. I understand all of the issues, and I absolutely agree at this moment about no deck at this

size. My point-of-view is to bring the house further back from the lake. It's 47' to meet the two neighbors, and the variance today is for ...

Jay James - That would be a request for a required dimensional variance of 22'. The house itself, including the garage, is almost 39' deep. If it were to be pushed back all the way to the 47', take 22' off the 39', that leaves a 17' wide house.

Chairperson Rosman - I understand that's an issue. I also understand that the developer didn't do everything accordingly. I understand you want to be on the lake. My big issue is with being too close to the lake, and the second issue is the deck. I cannot go with the deck because it would create a real problem. I would not mind seeing you bringing the house 5' back, closer to the road. Take 5' out and come closer, to widen the distance from the lake to the house. I would like to see that. I certainly don't want to see you with a 17' house. I understand. I also live on Commerce Lake and I get it, but I also understand that you're asking a lot of this lot; therefore, you're asking a lot of this Board to give you a variance, changing what the Zoning Ordinance requires. We are required to give the minimum, not everything you're asking for.

I would like the Board to consider that we look at the 17' variance instead. Could you live with that? I know you don't like it, but will you live with it?

Mr. Kuza - I would like the deck.

Chairperson Rosman - I know you would, that's why you're here.

Mr. Kuza - I don't mind taking the deck out.

Pacheco - If you're going to reduce the house, which is a possibility, you would have to redesign the house.

Chairperson Rosman - Yes, I know.

Pacheco - To have him make that decision right now, it's really expecting a lot. I know I couldn't do it. If we're thinking along that line ...

Chairperson Rosman polled the Board members to see how they felt about asking Mr. Kuza to reduce the request from 22' to 17'.

Sovel - Did you just make up 5'?

Chairperson Rosman - I know from trusses they go by 5'.

Sovel - If he brings it back 17', then he will have an obstructed view on each side.

Chairperson Rosman - Of course.

Sovel - I'm not opposed to the five feet. I'm not sure where it's coming from. The way I looked at it is that I'd prefer for him to be right in line.

Jay James - That's what he has done.

Sovel - But if he wants the deck, I'd like the deck to be that line. So, if you want a 10' deck, you have to move the house back 10'. I looked at the whole package.

Chairperson Rosman - So you would bring it back 10' instead of 5'?

Jay James - If he wanted the deck.

Sovel - If he wants a 10' deck, move the house back so that the sightline between the two other homes ...

Chairperson Rosman - Equals the deck, or the deck is part of it.

Sovel - Correct. If no deck, then the house.

Mistele - I agree with that.

Jay James - I said it's 39', including the garage. On the site plan, this square part is the garage. From there to the outside wall, which is the living space, is 17.5'.

Chairperson Rosman - How many cars is the garage?

Jay James - It appears to be a 21' deep garage, so a parking space is 20' deep. It's a 2-car. So then you're going to have a 12' wide living space on that end of the house.

Chairperson Rosman - Got it. I hear what you're saying. Thank you, that's a good point. That now brings me back to my 5' instead of 10'.

Sovel - I'm not suggesting 10'.

Chairperson Rosman - Clarence?

Mills - I'm waiting for Rick to finish what he's saying.

Sovel - I'm saying that the sightline that Jay's showing, I'd only give a variance up to that line, to include whatever structure, whether it be the deck or the house, to be located in. A balcony cannot be overhanging beyond that line. No part of the structure should exceed that, from the ground up to the sky.

Jay James - He actually labeled that line as the visual sightline. You're saying no part of the structure can exceed that.

Chairperson Rosman - Am I correct? What you're saying is it's his choice; if he wants to pull the house back and have a deck, or build the house up to that line with no deck.

Sovel - Or a balcony.

Chairperson Rosman - Did you follow that, sir?

Mr. Kuza - So, if I don't want to build a deck ...

Sovel - Or a balcony.

Mr. Kuza - If I don't want to build a deck, the house would be good where it is now?

Jay James - That would be good, correct.

Sovel - Is it a 2-story house?

Mr. Kuza - Yes.

Sovel - If you put on a 5' balcony, then you have to bring the house back 5'.

Mr. Kuza - The reason I'm requesting that is because it's got a walkout basement.

Chairperson Rosman - Jorge, did you follow? He can go with the deck up to that line, and pull the house back, or build the house up to that line.

Pacheco - Yes, that makes more sense. Then he can stay with the house the way it is and not put on the deck, and it's fine.

Mills - That was my original thought in the beginning was to build the house with no deck.

Chairperson Rosman - Okay, are you comfortable with that?

Mr. Kuza - Yes.

Jay James - I followed it.

Chairperson Rosman - I know you do. That also means, if you choose to have a balcony that goes out 3', the house comes back.

Jay James - In essence, you cannot have a door wall on that side of the house, except down at the walkout.

Mr. Kuza - Let's say I want a 3' just above there, then I have to pull the whole house back.

Jay James - Yes, that's right. If that's what you want, then you have to pull the whole house back.

Sovel - Do you need any kind of special wording?

Jay James - I'm good. I guess if you are to approve the 22' setback, you can say, no part of the structure can exceed past that line.

**MOTION** by Sovel, supported by Pacheco, to approve with a condition, Item PA17-0011, the request by Amer Kuza of Commerce MI is requesting a variance from Article 6 of the Commerce Township Zoning Ordinance to construct a new home that will encroach into the lakeside front yard setback located at 1740 Sadie Shore.

Sidwell No.: 17-16-476-028

Based on the presentation and comments we have heard, I believe the applicant has satisfied all the criteria of Section 41.09 of the Township Zoning Ordinance for granting dimensional variances, and therefore I make a motion to approve the request for a variance from Zoning Ordinance Section 6.02.B, for a variance of 22.0 feet relative to the minimum lakefront side setback, **subject to the following condition:**

1. This structure cannot exceed into any part of the 22.0 foot variance; i.e., no part of this structure can exceed past the line as specified, and as discussed herein.

**Approval is based upon the following reasons:**

- A. Without the use of the variance, the property could not be appropriately used in the same manner as others in that same zoning district;
- B. This will put the applicant on the same or similar equal footing as others in the same district;
- C. Granting the variance will not cause significant adverse impacts to other property owners.

**Discussion -**

Rosman - I'm not 100% sure that I would say not self-created, inasmuch as ...

Sovel - The water line is what it is.

Rosman - I know. My only concern is that the predecessor created the problem.

Sovel - I can remove that one.

Rosman - All right, I agree with "granting the variance would not cause significant adverse impacts".

Sovel - Let's not forget the seawall, if he wanted one. I'll remove the hardship.

Rosman - Okay, we took out the hardship.

**ROLL CALL VOTE:**

**Ayes:** Sovel, Pacheco, Mills, Rosman, Mistele

**Nays:** None

**Absent:** McKeever

**MOTION CARRIED UNANIMOUSLY**

**ITEM G2: PA17-0009 – MARIE CASSAR – PUBLIC HEARING**

Marie Cassar of Commerce MI is requesting variances from Article 6 of the Commerce Township Zoning Ordinance to construct a single family home that will encroach into the minimum side yard and total side yard setbacks and the minimum distance to adjacent structures located at 8463 Arlis. Sidwell No.: 17-12-452-004

**Chairperson Rosman opened the public hearing.**

Chairperson Rosman - I want to tell you, you do not have house numbers on your house. That is a safety issue that you need to correct ASAP. If you call police or fire, they're going up and down the street looking for you. That's not fair to you or the people in your house.

Marie Cassar - I'm sorry.

Chairperson Rosman - I'm sorry for you, it's a safety issue for you. People have to have visible, easy to read numbers on their house. If you call for an emergency, we've got to be able to find you. The numbers should be 6", and I suggest contrasting colors.

Ms. Cassar - Good evening. Thank you for considering my request. I would like to renovate the existing structure that's on that property. It's a 1940 cottage. It has been

in my family for 30 years, and it is presently nonconforming. It's my understanding that somewhere back in antiquity, that is how they created those lots for cottages. It is nonconforming in four ways, according to the code. Each setback from each property line is within the 4' setback. It does not have the total 14' side yard. It also is currently within the 10' setback that is of the neighboring structure.

All of these nonconformities were preexisting to the current structure. What I'd like to do with the renovation, the proposed house, is I'd like to build a permanent house for me to live in. I would like to keep the original footprint of the cottage that's there. I designed this so that I would not need to ask for a variance.

I have an addition that would go out on the lakeside 16', an addition that goes out toward the street for a garage, and then a 2nd story addition. My issue was that when I met with builders over this past summer, no one wanted to touch it. They tell me they can't do it and they were all chiming the same story; go ask for a variance.

My plan was to try to renovate the existing structure and add onto it. That's what brought me to you.

Chairperson Rosman - You said something that was a little confusing. You wanted to remodel. Are you going to demolish and start over again, or are you going to work with what you have there.

Ms. Cassar - Originally, I was going to attempt to work with what was there. Today, after talking with the builders, that doesn't seem feasible.

Chairperson Rosman - Okay, so it's demolish and start over again. Thank you.

David Gingras, 1916 Applebrook Dr. - I'm the owner of the parcel just east of the property in question. I want to talk briefly about three things; rules, regulation and revenue. Rules to me are residential rules to ensure the safety, conformity and aesthetics of a particular subdivision or area. Regulations are which govern the rules. The regulation in this incidence on these lots, you're supposed to have 14' of easement on a property. I bought this property here a couple years back, and you can see an area in front of the little rental property I have there where there was a nonconforming lot. This lot had two structures. One was a 2,800 foot nonconforming residence that had been condemned, and then there's a rental property.

The bank gave me the mortgage under the supposition that I would take the existing, nonconforming, bigger house down. That is what I had to do there. I hired a demolition person to come in and take the house down, but where the rental property is, there's a telephone pole and all the utilities go from the rental property to the telephone pole. At the time, I'd asked Marie, it was actually her sister Lisa who had lived there; this was in between Lisa and Marie taking over their house when their father has passed away, I asked if I could use their driveway as an easement to get the demolition people in to take the house down. Marie denied my request, which is certainly her prerogative and well within her rights to do that, but I ended up having to take the house down board by board myself. She put me under a lot of duress on multiple occasions, calling the EPA to make sure that things were being done properly; the silt fence, asbestos and lead issues and things like that, which I conformed to and I got the property down.

My hope is to someday build a house, and that's where I go with revenue. If you look at the house just to the east of where I'm at, that's the type of house I envision building. A house that will generate between three and five times the tax revenue that you're currently getting from that property right now, but what I don't want to do is build a

house next to a series of 30' lots, with one house on top of the other. Had I known that you could apply for a variance to take a structure down and build the exact same thing there, then I would have done that with the structure I had then and there. I'm a person that abides and conforms to regulations.

The regulations say, nonconforming, you have to take it down. I'm here to refute her request to take that house down. If she does decide to take the house down, and you are going to approve it, I would recommend, because I'll be there the day they put a shovel in the ground, to make sure that the EPA is going to watch meticulously with the issues. I would have had somebody here tonight with the EPA to give you the degree of probability that not only is there lead, and asbestos, but two dozen other hazmat issues that could be dredged up there when you allow somebody to take that house down.

That in a nutshell is the crust of my argument there. I hate to present issues without solutions, and I don't know if this is the proper forum to present solutions, but my hope was, at some point in time, that I'd be able to procure that 30' lot, make it a 90' lot and build a house there. I am concerned if you do approve it, and Marie does move ahead and build the house, then all of the sudden my sightlines are called into question, then we'll have to go to the next level in terms of setbacks and things like that. I'm certainly amenable to solutions, be it buy my property for fair market value, or I buy hers. I'm even amenable to putting 30 and 60 together and sell it as a 90, and I take 2/3 and she takes a 1/3. I know that's not the forum tonight, but I just wanted to throw that out there.

Chairperson Rosman - Thank you.

Mr. Hill, 8497 Edgewood Dr. - I was present when the two houses were built to the west of there, and the situation that was involved with that. It's been a good addition. The Cassar family, we have three members of your family on my street, and your family is over there, and we welcome you very much. I think the only issue is going to be, making sure there is a good firewall. This will be a wonderful change to that area. No offense, but it looks a little dumpy. I would strongly request that the Board approve this because I think it could be a wonderful addition to the neighborhood.

**There were -3- returns and -0- letters.**

**Chairperson Rosman closed the public hearing as there were no additional questions or comments.**

**Board Comments:**

Pacheco - I don't have any issues.

Mills - The first concern I have, and Jay, you might be able to address this. Has the Fire Department had any input on this as far as the distance between the proposed house and the house located further west?

Jay James - I have not had any conversations with Todd. He's been gone for a while. I know we've discussed this on other houses that are very similar, and he has been okay with it as long as the wall is a fire-rated wall. We've approved things in the past that would require that wall to have an extra fire-rating on it.

Mills - I'd also like to mention that the site was well-marked. Not all of our visits are marked so that we understand what's going on. I'm also wondering, can the house be built without a variance?

Jay James - It's a 30' wide lot. If you have to meet the 14' side yards, you'd have a 16' wide house.

Sovel - I have no problem with it. I do have a concern with the fire-ratings. It's not just fire-rated. There was additional language for double drywall and fire resistant. You could not have wood on the exterior, and that includes the overhang.

Jay James - Yes, it had to be fire resistant material. I would say the fire-rating of the wall has to meet the Fire Marshal's approval.

Sovel - I'd like to be more specific, because whoever approves it now could be gone in the future and we'd have no true record of what's required.

Jay James - You approved one off of ...

Chairperson Rosman - Listeria.

Jay James - Yes, Jim Maher, and it was double 5/8's.

Sovel - Okay. Is that something you're okay with? That means you can't use like aluminum siding, or T1-11 for sure.

Jay James - Brick and stone would definitely be allowable. There are other materials that are fire resistant, but it's up to you to have an engineer determine.

Mistele - I'm in agreement with Sovel.

Pacheco - Won't she have to meet all the fire-rating measures when she does the house.

Jay James - Yes, and she does. The one she doesn't meet is the 10' separation.

Pacheco - Right, so if she gets the go-ahead for that, and removes and builds the house, she's going to have to do it according to code?

Jay James - Actually, the fire code is the one that requires that 10' separation, so if you're going to reduce that, in your motion you should make some type of requirements in lieu of the 10' separation. Rick is on the right track with specifying how it's going to have to be protected from the fire.

Pacheco - The Fire Department doesn't have a regulation that is closer than that?

Jay James - He does, but for your variance in 10 years when someone comes in here and looks at it and says well, you just let them go closer, we wouldn't know that the Fire Marshal is going to look at it later.

Discussion continued regarding the fire-rating requirements.

Chairperson Rosman - I don't have a problem with what you're doing, but I certainly understand what your neighbor is saying. I don't know. I know we had a cottage, it was built in the 40s. Asbestos was an issue when the people took it down. I would like our motion to include that there be, what do you call it, remittance of ...

Jay James - It's mitigation of any hazardous materials.

Chairperson Rosman - And that they be properly disposed of. Are there any permits pulled for that?

Jay James - There is only a demolition permit that's pulled through the Township, however, for residential properties, items such as asbestos surveys are not required at residential properties; only on commercial.

Chairperson Rosman - If we wanted to, we could require one?

Jay James - You could.

Sovel noted that the request includes four variances. Chairperson Rosman stated that all four variances could be handled in one motion. She polled the Zoning Board Members, and all were in agreement that all the variances should be done together.

#### **ITEM G2: PA17-0009 – MARIE CASSAR – PUBLIC HEARING**

**MOTION** by Sovel, seconded by Mistele, to approve with a condition, Item PA17-0009, the request by Marie Cassar of Commerce MI for variances from Article 6 of the Commerce Township Zoning Ordinance to construct a single family home that will encroach into the minimum side yard and total side yard setbacks and the minimum distance to adjacent structures located at 8463 Arlis. Sidwell No.: 17-12-452-004 Based on the presentation and comments we have heard, I believe the applicant, Marie Cassar of Commerce MI, has satisfied all the criteria of Section 41.09 of the Township Zoning Ordinance for granting a dimensional variance; therefore, I make a motion to approve the request for variances from the following Zoning Sections:

1. A variance of 2.4 feet relative to the requirement of Section 6.02.C, for a minimum of 10 feet of separation between adjacent structures;
2. A variance of 7.42 feet relative to Section 6.01 for the minimum 14 foot of combined side yard;
3. A variance of 1.0 foot relative to Section 6.01 for the minimum side yard setback of 4 feet on the east side;
4. A variance of 0.42 feet relative to Section 6.01 for minimum side yard setback of 4 feet on the west side.

Approval is for the following reasons:

- A. Without the requested variances, the property cannot be used in the same manner as others in that zoning district use their property;
- B. The variances requested will at least allow the applicant to be put on the same equal footing as others in the same zoning district;
- C. The variances needed are due to the unique features, size and shape of the property;
- D. The problem was not self-created due to the size of the property;

- E. Granting of this variance will not cause significant adverse impacts;
- F. The practical difficulty and the hardship sought to be cured by the variance requests are not just a minor inconvenience, or a desire for a higher financial return.

**Approval is subject to the following condition:**

- 1. Fire retardant materials will be used on both the east and west side walls, including 5/8" double-thickness drywall on the interior, and the use of brick, aluminum trim, fascia, soffit and gutter on the exterior.

**Discussion -**

Rosman - What about the asbestos?

Sovel - That's not a variance issue, it's a demolition issue.

Rosman - You could require it if you wish.

Sovel - No, the motion stays as is.

**MOTION CARRIED UNANIMOUSLY**

**ITEM G5: PA17-0012 – THE BIG SALAD – PUBLIC HEARING**

Mark Gibson of Majestic Sign & Design representing The Big Salad of Commerce MI is requesting an exception from Article 30 of the Commerce Township Zoning Ordinance to construct a wall sign that will exceed the maximum square footage allowed located at 3050 Union Lake Road. Sidwell No.: 17-12-401-015

**Chairperson Rosman opened the public hearing.**

Mark Gibson - I'm the owner of Majestic Sign. Our business is at 17080 Masonic, Ste 229, Fraser, MI. We're here today to seek a variance for a sign to be located at 3050 Union Lake Road, the future home of the The Big Salad. I'd like to read a letter from the future owners of The Big Salad.

*Dear Commerce Township Board Members,*

*As residents of Commerce Township, my husband and I are starting a new restaurant in the Commerce Town Center. We are so excited for this new venture. Our goal is to bring a new dining experience to our community that can be enjoyed by all.*

*The Big Salad is a fairly new franchise with limited sites at this point in time. Many people are not accustomed to our brand or sign logo. We want to ensure that residents and other potential customers become familiar with our store.*

*Based on the distance from the road, the approved Township sign size remains difficult to see for those driving by, or even from further back in the parking lot. It is our belief that increasing our signage is essential to the success of our new restaurant.*

*We love our community and want to be actively involved in offering great, nutritious food, support our schools through possible interactive student programs, as well as generating more business for Commerce Township.*

*We are requesting permission for a variance on size dimensions in the hopes of starting our new business off in a smart and successful manner.*

*Thank you for considering our proposal.*

*Signed,*

*Sandra and Craig LaFrance*

*4928 Parkgate Drive, Commerce Township*

Mr. Gibson - I'd like to address the following standards for consideration of this variance:

- 1. Obstructions - Construction of a conforming sign will obstruct the vision of motorists or otherwise endanger public safety or health. That is not true.

2. Visibility - A conforming sign would be blocked from the sight of passing motorists due to existing buildings, trees or other obstructions. We believe this is true for the following reasons:
  - a. The site, the building is about 1-1/3 football fields west of Union Lake Road.
  - b. This area of Union Lake is quite congested with traffic. If we have to exist within the sign we currently are being allowed, it would make it hard for traffic to see passing by.
  - c. One of those reasons is the mature foliage obstructing people's view of this facility.
  - d. We also believe we're handicapped by the now vacant former Hiller's anchor store being vacant, which tends to make passers by move on past the location and miss this facility.
3. Site Features - Construction of a conforming sign requires significant tree removal, or extensive topographic changes. We believe that is true for the reason that we talked about the foliage, and the building being so far setback from Union Lake Road.
4. Scale - A sign that exceeds the allowable height or area standards of this Article would be more appropriate in scale to the building, site frontage or the neighborhood. We believe this is true for the following reasons; businesses on either side of The Big Salad, Acuity, are at 71 square feet, LaVida Massage, 122 square feet, Wild Bill Tobacco, 44 square feet, Fusion Hair Salon, 103 square feet. We're proposing we be allowed to go from 25 to 51.7, roughly double the size allowable.
5. Aesthetics - The exception shall not adversely impact the character or appearance of the building lot and/or neighborhood. We believe that to be true because the other businesses are in that same complex.
6. Minimal - The exception shall be the minimum necessary to allow reasonable use, visibility and readability of signs. We believe that is still true because of the distance from the road and the mature foliage in the area.
7. Intent - The exception shall not significantly impair the intent and purpose of this article, and we believe that to be true for the reasons already stated.

In addition to that, we do have approval from Arkan Jonna and his director of operations at that facility. They've approved of this proposal.

**There were -3- returns and -0- letters.**

**Chairperson Rosman closed the public hearing as there were no additional questions or comments.**

**Board Comments:**

Mistele - I struggled with the sign. I don't see how everyone else in that shopping center isn't having issues. I know we've talked to the shopping center owner about a year ago and he put that new sign up front. I asked him specifically if he had enough spaces in the case of new tenants who wanted more visibility for their sign.

Mr. Gibson - You mean the directory sign?

Mistele - Yes, and he assured me that he had enough space on that, and that's why I struggle with seeing the need for a larger sign, when we've already talked with them about a similar issue the past.

Sovel - Why do we have so many different sizes?

Jay James - That's a good question. Since they've brought it up, we've been going out to investigate them. I can tell you that two of them, we pulled the approved plans, and the plans have it at 1 square foot per lineal foot. We're going to have to take a rise ladder out there to measure them. If they're the wrong size and didn't meet their approved plan, they're going to be coming down.

Sovel - How is that supposed to help me with this one?

Jay James - It tells you that we have not approved larger signs up there. They got up there because the sign company put up a larger one than they were approved for. I have not found one that was approved to be larger than 1 square foot per lineal foot.

Sovel - Are you suggesting he apply for 25' and put up a 51'?

Chairperson Rosman - He's not suggesting that at all.

Jay James - No. What I'm telling you now is that we're not only going to double check his, but we're going to check all his neighbors.

Sovel - Without enforcement, it makes this difficult.

Jay James - I'll take the blame. I will take the defense that it's hard to measure it when it's up in the air 30' and we're on the ground. Since they brought this to our attention, we discussed possibly telling them that we'll do the inspection when the sign is on the ground, we'll measure it, and then afterwards you can put it up. The other thing I talked to Dave Campbell about on this; we don't have a lot of strip centers that sit this far back from the road. Our Ordinance, if you're 500' off the road, it actually does allow for a larger sign, up to 200 square feet, such as Home Depot.

Sovel - Newberry Square?

Jay James - That is the other one that probably sits back. Dave and I have discussed that we're going to look into the possibility of amending the Ordinance to allow, if you're up to 100' feet off the road, 1:1, if you're up to 250', it might be 1.5:1, or 2:1. We will look into it and we would bring it back to the Planning Commission.

Sovel - I can't put on blinders and just look at his unit without looking at the others. Let's say one of these is 50 or 47, and his will be 25.

Discussion continued between Jay James and Sovel regarding enforcement of signage and sizes, violation of the sign permit, and how the Building Department will address this.

Chairperson Rosman - That is an issue that belongs in the Building Department. Our issue tonight is, do we give Big Salad a variance, or don't we? It has nothing to do with anybody else in the center who does not fit what they had agreed to. Any changes have to go to the Planning Commission, which I want to talk about in Other Matters.

Mills - I guess, based on what Jay has just said, we're going to be looking into a shopping center like this, so many feet back, what is going to be the allowable square foot size of the sign.

Jay James - That I don't know. We're going to look into it. We're going to look at other communities, size ratios, et cetera.

Chairperson Rosman - You're months away from this right now. It's not even on the Planning Commission agenda. I bring your attention back to this sign tonight for a variance.

Mills - At this point, I'm going to pass.

Pacheco - Where this is going, I think that the smaller sign would probably be better, and then you'll meet the code.

Chairperson Rosman - I get that they want the salad on there.

Mr. Gibson - The bowl?

Chairperson Rosman - The bowl.

Mr. Gibson - Yes, that's a trademark and we have documents here if you want to see it. They've branded it and it's unique like the golden arches.

Chairperson Rosman - I understand. How many stores are in Detroit?

Mr. Gibson - In southeast Michigan right now, they're at 6. They have 2 in Houston, and this will be #7, and they have a growth rate of about 3 per year in the Midwest and down South.

Chairperson Rosman - I'd like to make a suggestion. Personally, they should take the salad away, and make the sign Big Salad, or make a smaller salad, and make the letters bigger. If the sign Ordinance changes, then spend the extra money and redo the sign. The fact that they have the logo on it is a choice that they're making. I'm not saying they're not supposed to have it based on what they agreed to corporately, but the salad is in the way of the letters being bigger to fit onto that.

The Hallmark store was there for years and it had their name above it. The sign was smaller, but it was amazing, people found it for years.

The fact that people didn't do what they said they would do is outside of our purview. It's in his purview, but outside of ours. I'm not going to go for a larger sign. I'm going to go with the one that the Township requires in size. If it changes, I would love to see you make another sign.

**MOTION** by Rosman, supported by Pacheco, to deny Item PA17-0012, The Big Salad, the request by Mark Gibson of Majestic Sign & Design, representing The Big Salad of Commerce MI, for an exception from Article 30 of the Commerce Township Zoning Ordinance to construct a wall sign that will exceed the maximum square footage allowed located at 3050 Union Lake Road. Sidwell No.: 17-12-401-015

Based on the presentation and comments we have heard, I believe the applicant, Majestic Sign & Design, representing The Big Salad, has not satisfied the standards of Section 30.09 of the Township Zoning Ordinance for granting an exception to exceed the square footage allowed for a wall sign, and therefore, I make a motion to deny the request for the exception of 21.4 square feet, relative to Section 30.05.D of the Zoning Ordinance.

Denial is for the following reasons:

- A. Construction of a conforming sign will not obstruct motorists, especially since as you've said, if they sat in traffic they have plenty to read, or otherwise endanger public health or safety;
- B. The conforming sign will not be blocked from the sight of passing motorists, due to existing buildings, trees or other obstructions;
- C. Other businesses, and using the Hallmark again, they had been able to do business there for a good 35 years;
- D. The construction of a conforming sign will not require significant tree removal;
- E. The exception is not necessary, as it will not impair the intent and purpose of this article.

**MOTION CARRIED UNANIMOUSLY**

Mr. Gibson - If they wanted to go 1.5 this size, would they have to come back before the Board?

Chairperson Rosman - Yes, because that's what the Ordinance is.

Mr. Gibson - Okay, thank you.

**H: OTHER MATTERS TO COME BEFORE THE BOARD:**

- Chairperson Rosman initiated discussion on the Sadie Shore parcel. Her issue is with the Planning Commission of that time because if they followed the Ordinance, he would only be able to build a 16' house. The issues are with the lot splits and the creation of the subdivision, and the other boards at that time, because that is not a buildable lot. It should have been divided between the other two lots. Jay James explained, part of the issue is because the adjacent houses are built so far back. If they built 25' from the water, he would have been able to do the same. Sovel inquired with Jay regarding potentially amending the Ordinance to include language for the sightlines so that properties such as this would not require a variance. The verbiage would need to include reference to the structure not obstructing the line of vision between the two adjacent houses.
- Chairperson Rosman also initiated discussion on the sign ordinance size requirements and ratios for determining these, along with the potential to amend the ordinance for the shopping centers that are setback further from the road. She and Jay James discussed the permitting process and penalties for violating permits, whether they be building permits or sign permits.

- Sovel asked if two standard colors could be used for staking. Jay James replied that this could be standardized and the application form could be updated accordingly.

Chairperson Rosman suggested that the November Zoning Board of Appeals meeting be moved to Tuesday, November 21, 2017 at 5:30pm. After discussion with the Board members, all were in agreement, as long as it does not interfere with any special budget meetings that may be held by the Township Board in November.

**I. CORRESPONDENCE:** None.

**J. PLANNING DIRECTOR'S REPORT:**

- No Director's Report was provided in Dave Campbell's absence.
- **NEXT REGULAR MEETING DATE: THURSDAY, NOVEMBER 21, 2017**

**K. ADJOURNMENT:**

**MOTION** by Mills, supported by Mistele, to adjourn the meeting at 9:44pm.

**MOTION CARRIED UNANIMOUSLY**

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**Jorge Pacheco, Secretary**