

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MANISTEE

J. ANDREW COOK and BARBARA COOK

Appellant,

v

ONEKAMA TOWNSHIP,

Appellee,

v

CATHERINE BRADFORD,

Intervening Appellee.

Case No: 21-17456-AV

Hon. David A. Thompson

Richard M. Wilson (P29717)
Bradley A. Fowler (P74499)
Curtis L. Underwood (P83125)
Mika Meyers, PLC
Attorneys for Appellants
900 Monroe Avenue NW
Grand Rapids, MI 49503
(616) 632-8000

Thomas A. Grier (P5296)
Running Wise & Ford, PLC
Attorneys for Appellee
1501 Cass St. Ste. D
P.O. Box 686
Traverse City, MI 49686
(231) 946-2700

Armin Schleiffarth (P81763)
Armin Schleiffarth PC
Attorney for Intervening Appellees
4895 Main Street Suite G
Onkama, MI 49675
(269) 921-0591


PROOF OF SERVICE

I hereby certify that on the date below, I served via first class mail, **INTRERVENING APPELLEE'S MOTION, BRIEF, and RESPONSE to APPELLANTS' CLAIM of APPEAL**

with w/ Proof of Service, to Appellant and Appellee, through their attorneys at the addresses listed in the caption of this case.

I declare that the above statement is true to the best of my information, knowledge, and belief.

March 4, 2022



Armin Schleiffarth

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IN THE CIRCUIT COURT FOR THE COUNTY OF MANISTEE

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NOTICE OF HEARING ON MOTION TO INTERVENE

Please take notice that Motion to Intervene will be heard before the Honorable David A. Thompson on March 28, 2022, at 2:00 pm.

Respectfully Submitted,

Dated: March 3, 2022

/s/

Armin Schleiffarth (P81763)
Attorney for Intervenor

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MANISTEE

J. ANDREW COOK and BARBARA COOK

Appellant,

v

ONEKAMA TOWNSHIP,

Appellee,

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Intervening Appellee.

Case No: 21-17456-AV

Hon. David A. Thompson

**ORDER GRANTING APPELLEE
CATHERINE BRADFORD'S MOTION
TO INTERVENE**

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ORDER GRANTING CATHERINE BRADFORD'S MOTION TO INTERVENE

At a session of the court, held in the
Courthouse in the City of Manistee,
County of Manistee, State of Michigan on March , 2022

Present: Honorable David A. Thompson

Proposed Intervenor, Catherine Bradford, having filed a Motion to Intervene as Intervening Appellee in the above-captioned appeal; and for the reasons stated on the record, the Court enters the following Order:

IT IS HEREBY ORDERED that Catherine Bradford's Motion to Intervene as Intervening Appellee is granted.

Date: _____

Hon. David A. Thompson

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MANISTEE

J. ANDREW COOK and BARBARA
COOK,

Case No: 21-17456-AV

Appellant,

Hon. David A. Thompson

v

ONEKAMA TOWNSHIP,

Appellee,

**MOTION TO INTERVENE w/
BRIEF IN SUPPORT**

v

CATHERINE BRADFORD
Intervening Appellee.

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MOTION TO INTERVENE w/ BRIEF IN SUPPORT

Proposed Intervening Appellee, Catherine Bradford, requests intervention in this matter pursuant to MCR 2.209(A)(3) and (B) for the following reasons and the reasons stated in the Brief In Support.

1. A Claim of Appeal was filed by Appellants, J. Andrew Cook and Barbara Cook on September 15, 2021. The Appeal was from a decision by the Onekama Township Zoning Board of Appeals (“ZBA”) to deny the Cooks’ requests for dimensional variances to construct a large house on a small nonconforming beachfront lot.
2. The requested variances included: reducing by **50%** the water protection setback distance from 40 feet to 20 feet; reducing the rear minimum setback by approximately **68%** from 25 feet to 8 feet 10 inches; reducing the north minimum side setback by **20%** from 10 feet to 8 feet and reducing the front setback by **36%** from 25 feet to 16 feet.
3. Upon information and belief, since at least 1940, the Cooks’ lot has been used as a beach and boat access to the lake. The Cooks own a condominium on the adjacent northern property, and use the subject small lot for sun bathing, dock, boat access, and picnicking.
4. Catherine Bradford owns the beach property directly south and adjacent to, and *partly including* the property on which the Cooks’ proposed building development would be situated (see **Exhibit 1** and **Exhibit 2**).
5. The sea wall, dock, hedge, and lawn encroach on Catherine Bradford’s adjacent Portage Lake front property.
6. The deed to the Cooks’ Property mentions the seawall encroachment and the rights of the public in Avenue A (**Exhibit 3** – Cook Deed).
7. Before any variance is considered, the Cooks must demonstrate that they have valid established rights to all of their claimed Property.

8. Catherine Bradford participated fully in all of the ZBA meetings, including the August 18, 2021 ZBA hearing where the ZBA denied the Cooks' variances.
9. Catherine Bradford expressed her opposition to granting the Cooks variances for their building project due to the impact the large structure and development would have on the use of her property, her privacy, and her property value. Further, she argued that the standards required to be met under the Zoning Ordinance were not met by the Cooks, and therefore, the variances should be denied.
10. As part of the ZBA record, Onekama Township Zoning Administrator, Katie Mehl, calculated the impervious surfaces of the Cooks' proposed project. The development would consist of 47% of impervious surfaces (including Portage Point Drive) if the variances were granted. (See **Exhibit 4**).
11. The storm-water runoff from the 47% impervious surfaces would directly and substantially impact Catherine Bradford's northern property specifically where the Cooks dock, hedges and lawn encroach. Her property would essentially become a part of the development, including a part of its retention "pond" and depository of the building's runoff if the variances were granted.
12. Further, the Bradford property would go from a tranquil and beautiful beach with beaches on either side, to one where a 2 ½ story house and garage are

- situated closer than 10 feet from her property line, significantly diminishing the property value, privacy and quiet enjoyment of her lakefront property.
13. After the Cooks appealed the ZBA decision, the Onekama Township Board and the Cooks agreed to hold the appeal in abeyance to try to settle the matter.
 14. The public was invited to “participate” in negotiations on a limited basis, and it soon became clear that the Township board had no intention of defending the well-reasoned and defensible ZBA decision.
 15. Upon information and belief, the Township and the Cooks continue to work on a settlement agreement that might allow a relatively large house and garage to be built on the Cooks’ Property, despite the encroachments onto Catherine Bradford’s property and the obvious negative impacts to the use of her land.
 16. Catherine Bradford will be directly, personally, and substantially harmed if the ZBA decision is overturned, or if the Township and Appellants reach a settlement agreement that permits a new building to be constructed on the Cooks’ Property.
 17. This impact is unique to Catherine Bradford. Her substantial property interests would be detrimentally affected in a manner distinct from that of the general public. Because of the encroachments, she will be bound by the decision of the appeal (whether by Court Order or Consent Judgment) and the outcome will directly impact the physical use of her property, as well as her property value and the quiet enjoyment of her land.

18. On February 17, 2022, the Township and the Cooks agreed to a continuance of the abeyance of the appeal until March 31, 2022. The Township has not yet responded to the appeal, and therefore, this motion to intervene is timely.
19. Catherine Bradford's interests are not adequately represented by the Township, as demonstrated by the Township's decision to pursue settlement at any cost instead of vigorously defending the ZBA's decision.
20. Catherine Bradford intends to defend her rights as demonstrated in the attached proposed Response in Opposition to J. Andrew Cook and Barbara Cook's Claim of Appeal. (**Exhibit 5**).
21. Catherine Bradford meets the requirements for intervention by right under MCR 2.209(A)(3) and alternatively, she meets the requirements for permissive intervention under MCR 2.209(B).

WHEREFORE, Catherine Bradford respectfully requests that this Court grant her Motion to Intervene for the reasons stated above and in the Brief in Support.

BRIEF IN SUPPORT

MCR 2.209(A)(3) provides for intervention by right:

when the applicant claims **an interest relating to the property or transaction** which is the subject of the action and is so situated that the **disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest**, unless the applicant's interest is adequately represented by existing parties. (emphasis added).

Intervention should be liberally granted when the proposed Intervenor's interests may be inadequately represented. *Precision Pipe & Supply, Inc v Meram Construction, Inc*, 195 Mich App 153 (1992), citing *Sumpter v Kosinski*, 165 Mich App 784, 802, (1988). In *Karrip v Township of Cannon*, 115 Mich App 726, 692 (1982), the Court of Appeals

explained that the test for determining intervention by right has three components: (1) that there is a timely application; (2) representation of the applicant's interest by existing parties is or may be inadequate; and (3) the applicant may be bound by a judgment in the action.

Catherine Bradford clearly has an interest related to the subject property as an aggrieved party, due to the Cooks' physical encroachments on her land, the proximity of the proposed development to her quiet beach, and her right to private quiet enjoyment, and the expected decrease in her property value if the ZBA decision is overturned. She would suffer special damages different than that of the general public due to the proposed physical use of her property (due to the encroachments) as part of the Cooks' development. *Olsen v Chikaming*, 325 Mich App 170 (2018). Disposition of the matter without her involvement will impair or impede her ability to protect these rights, and the Township Board is clearly not adequately representing her property rights. Further, her application is timely, and there will be no prejudice to either party if she is granted intervention.

The Motion to Intervene is Timely

The motion to intervene is timely as the Claim of Appeal was filed on September 15, 2021, and the Township has not filed a Response to the Claim of Appeal. The parties put the appeal in abeyance to pursue settlement negotiations and invited the public to participate. The Township and the Cooks have recently stipulated to an extension of the abeyance until March 31, 2022. Catherine Bradford has urged the Township to defend the ZBA's decision by submitting written comments to the Township, to no avail. If she is permitted to intervene, nothing has changed in terms of the trajectory of the matter, except that she will be represented in Court by her attorney. Therefore, there will be no prejudice to any party if Catherine Bradford intervenes now.

Representation of Catherine Bradford Is Inadequate

The burden of showing that the Intervenor interests may not be adequately represented is minimal. *D'Agostini v Roseville*, 396 Mich 185; 240 NW2d 252 (1976).

The representation by the existing parties need not be inadequate in fact; rather, the party seeking intervention need only show that the representation “*may be*” inadequate. *Vestevich v West Bloomfield Twp.*, 245 Mich App 759, 761 (2001). “The concern of inadequate representation of interests need only exist; inadequacy of representation need not be definitely established.” *Id* at 762.

Michigan law generally acknowledges that nearby property owners, whose interests are narrower than those of the general public, may not be sufficiently represented in zoning disputes. *See Karrip, supra* at 732. Claiming a much narrower interest than the general public seems to meet the minimal burden necessary to show that one’s interest may be inadequately represented by existing parties. *Id*.

In *D'Agostini, supra*, the Michigan Supreme Court determined that “adjacent landowners should be permitted intervention into a zoning case.” 396 Mich at 189. The court was persuaded by the following rationale:

[Intervenors], as owners of immediately adjoining property, were possessed of rights which would be adversely affected by the granting of the counterclaim, and whose interest in the litigation far exceeded that of the general public or other owners in the area. Moreover, we may consider that the city, the only defendant named in the counterclaim, is primarily concerned with the city-wide zoning pattern and cannot be guided solely by a consideration of individual hardships. Under such circumstances the legitimate objects and purposes of the city could well result in compromises to the detriment of individual rights such as those of the [intervenors]. 369 Mich at 189 (citation omitted).

As the United State Court of Appeals for Sixth Circuit has recognized:

[t]he municipal defendants had enough to do to defend themselves against the charges leveled against them by the plaintiffs. They do not have the same interest in protecting the values of the homeowners' properties as do the homeowners themselves. *Joseph Skillken & Co. v City of Toledo*, 528 F2d 867, 876 (6th Cir 1975).

For the reasons stated above, Catherine Bradford has “aggrieved party” standing to intervene in the appeal. The proposed use of the Cooks’ Property to build a large new dwelling will affect substantial property rights, including the unwanted physical use of her property due to an expansion of the encroachments. If the Township and the Cooks devise a settlement agreement to allow a structure on the property, Catherine Bradford’s quiet beach would now include a 2 1/2 story structure within 10 feet of her land, the use of her physical property as part of the development including storm-water runoff, and the disruption of the quiet enjoyment of her property. These interests clearly rise above and beyond that of the general public. As demonstrated by the Township’s attempts to settle the matter and ignoring Catherine Bradford’s pleas to defend the ZBA’s decision, the Township clearly is not adequately representing her rights. Catherine Bradford must protect her specific property interests, whereas, the township’s interests are much more general in nature, and therefore, the Township has not, and will not adequately represent her in the appeal. See, *D’Agostini, supra*, at 189.

Catherine Bradford Will be Bound by the Judgment

In the context of a motion to intervene, “bound” by the judgment of the Court means that the potential Intervenor’s ability to protect her interest would be substantially affected. *Karrip, supra* at 732. Moreover, “a mere possibility that the judgment will be binding is sufficient to permit intervention.” *Id.*

Catherine Bradford's ability to protect her property and personal interests would be substantially affected if she is denied intervention and the ZBA's decision is reversed or compromised by a settlement between the Township and Appellants. Catherine Bradford would be effectively bound by a judgment or consent judgment in this matter, as she owns part of the property that is included as a part of the Cooks' development plan. Because the portion of Catherine Bradford's property that the Cooks encroach upon is a necessary part of the Cooks' project, in particular the hedge and sea wall, if the project is permitted - whether by Township or Court - it essentially binds Catherine Bradford to the decision.

For the reasons stated above, and because Catherine Bradford has filed a timely motion to intervene, has demonstrated that the Township will not adequately represent her interests and that she will be bound by the Court's decision, she should be granted intervention as a matter of right under MCR 2.209(A)(3).

Catherine Bradford Meets the Requirements for Permissive Intervention

In the alternative, Catherine requests that this Court grant intervention pursuant to MCR 2.209(B)(2) because of the existence of substantially the same or similar questions of fact and law common to the main action filed by the Appellants.

In this matter, the rights of Catherine Bradford, the Appellants and the Township clearly arise out of the same transaction - the ZBA's decision. Appellants are seeking to have the ZBA's decision reversed to the detriment of Catherine Bradford who will be directly and negatively impacted by the proposed project that includes part of her property. The questions of fact and law that Catherine Bradford is concerned with are the same as those presented in the Claim of Appeal. For these reasons, and those stated above, Catherine Bradford has met the requirements under MCR 2.209(B)(2) and permissive

intervention should be granted.

CONCLUSION

For the reasons stated above, Catherine Bradford requests that her Motion to Intervene in this matter be granted.

Respectfully Submitted,

Dated: March 3, 2022

Armin Schleiffarth (P81763)
Attorney for Proposed Intervenor

Exhibit 1

Exhibit 2

SEP 24 10 38 AM '02

LIBER 0816 PAGE 0579

Fanny A. Poppen
Register of Deeds
Manistee, Michigan 49860

QUIT CLAIM DEED

The Grantor, Edward H. Jones and Juniata B. Jones, whose address is Deupree House, 3939 Erie Avenue, Cincinnati, OH 45208, quit claims to Grantee, Catherine O. Bradford and Barbara A. Hensley, Trustees of the Edward H. and Juniata B. Jones Portage Lake Trust dated May 20, 2002, whose address is 3057 Springer Avenue, Cincinnati, Ohio 45208, the following described premises situated in the Township of Onekama, County of Manistee, and State of Michigan:

All that part of South Park in the Plat of Portage Point, being a part of Government Lot Three (3), Section Twenty-eight (28); All that part of South Park lying South of a line drawn from a point on the Easterly line of South Park 160 feet Northerly from the Southeast Corner of said Park and running Westerly to a point 100 feet Northerly from the Southwest Corner of said Park on the West line thereof, which is a portion of said South Park having been vacated as a park; except the West 132 feet thereof; Also, Lot Six (6) of Block Twenty-five (25), Portage Point.

Save and except the following described real property conveyed by the Grantors to Ted S. Marty, Jr.

That part of South Park in Portage Point Addition, Onekama Twp., Manistee County, Michigan, commencing at the SE corner of said South Park; thence N 17°26'08"E 160.00 feet along the Easterly side of said South Park for a P.O.B.; thence N. 72°15'05"W 184.96 feet; thence S 16°32'15"W 42.00 feet; thence S 83°06'09"E 188.80 feet to the P.O.B., containing 0.089 acres more or less. The above described parcel being subject to any rights-of-way or easements of record.

Tax ID# - _____

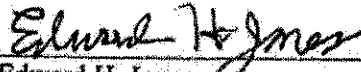
for the sum of less than One Hundred (\$100.00) Dollars.


This transaction is exempt from taxes pursuant to MSA 7.456(26)(a); MSA 7.456(5)(a).

Dated this 11 day of September, 2002.

44947

Signed in the presence of:


Edward H. Jones


Juniata B. Jones

STATE OF OHIO)
 : SS.
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 11 day of September 2002, by Edward H. Jones and Juniata B. Jones, who acknowledged that the foregoing was their free act and deed.


Notary Public
My Commission Expires:

Drafted by:
THOMPSON HINE, LLP
BY: Daniel O. Berger
Attorneys at Law
312 Walnut Street, 14th Floor
Cincinnati, Ohio 45202
(513) 352-6720

DANIEL O. BERGER
Notary Public - State of Ohio
My Commission has no Expiration date
Section 147.03 R.C.

Return to:
WOOD & LAMPING LLP
600 VINE STREET, SUITE 2500
CINCINNATI, OHIO 45202-2409

3

LIBER 0975 PAGE 0254 JAN 23 4 14 PM '06

Penny A. Pepera
Register of Deeds
Manistee, Michigan 49660

WARRANTY DEED

The Grantor, **BARBARA A. HENSLEY, Unmarried**, whose address is 9340 Hunters Creek Drive, Cincinnati, Ohio 45242, conveys and warrants to **CATHERINE O. BRADFORD**, whose address is 3057 Springer Avenue, Cincinnati, Ohio 45208, all of her interest in the following described premises:

See Exhibit A attached hereto and made a part hereof.

The property is conveyed subject to an existing mortgage which Grantee agrees to pay.

Being the same premises conveyed to the Grantor herein by Deed recorded of even date herewith.

for the sum of Fifty-Six Thousand Four Hundred Nine and 01/100 (\$56,409.01) Dollars and other good and valuable consideration, subject to easements, reservations and restrictions of record.

IN WITNESS WHEREOF, the said Grantor has hereunto set her hand this 6th day of January, 2006.

MANISTEE COUNTY 00012826	STATE OF MICHIGAN		REAL ESTATE TRANSFER TAX
	Rec #: 92457	01/13/2006	State: \$423.76
			County: \$62.16

Signed and Sealed:

Barbara A. Hensley

BARBARA A. HENSLEY

STATE OF OHIO, COUNTY OF HAMILTON, SS:

BEFORE ME, a Notary Public in and for said County and State aforesaid, personally appeared the above-named **Barbara A. Hensley, Unmarried**, who acknowledged the signing of the foregoing instrument to be her voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of January, 2006.

Linda G. Hoffman

Notary Public
My Commission Expires: _____



This instrument was prepared by:
Mark S. Reckman, Esq., Wood & Lamping LLP
600 Vine Street, Suite 2500, Cincinnati, Ohio
(513) 852-6054
Doc 259724

LINDA G. HOFFMAN
Notary Public, State of Ohio
My Commission Expires Oct. 31, 2008

EXHIBIT A

All that part of South Park in the Plat of Portage Point, being a part of Government Lot Three (3), Section Twenty-eight (28); All that part of South Park lying South of a line drawn from a point on the Easterly line of South Park 160 feet Northerly from the Southeast Corner of said Park and running Westerly to a point 100 feet Northerly from the Southwest Corner of said Park on the West line thereof, which is a portion of said South Park having been vacated as a park; except the West 132 feet thereof; Also, Lot Six (6) of Block Twenty-Five (25), Portage Point.

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Tax ID # 51-11-410-125-00 and 51-11-410-056-00

Date

January 19, 2006

This is to certify that there are no tax liens or titles on this property and that the taxes are paid for FIVE YEARS previous to the date of this statement. This certification does not include taxes if any now in the process of collection by the City, Village or Township Treasurer, or any denied Homestead Property Affidavit.

MANISTEE COUNTY TREASURER

(X) Mudjoke Dep.

Exhibit 3

Aug 17 9 36 AM '05

LIBER 0959 PAGE 0152

Penny A. Popora
Registrar of Deeds
Manistee, Michigan 49600

MANISTEE COUNTY 00012412
 STATE OF MICHIGAN
 Rec #: 89482
 08/17/2005
 REAL ESTATE TRANSFER TAX
 State: \$2475.00
 County: \$383.00

WARRANTY DEED

THIS INDENTURE, made August 9, 2005, between Alfred A. Turner and Susan Turner, husband and wife, whose address is 5620 Queens Kew, Bonita Springs, Florida 34134, Grantors; and J. Andrew Cook and Barbara L. Cook, husband and wife, a tenant by the entireties, with full rights of survivorship, whose address is 1980 E. 116th Street, Suite 350, Carmel, IN 46032, Grantees;

WITNESSETH, that the said Grantors, for and in consideration of Three Hundred Thirty Thousand (\$330,000.00) Dollars to them in hand paid by the said Grantees, the receipt whereof is hereby confessed and acknowledged, do by these presents, grant, bargain, sell, remise, release, alien and confirm unto the said Grantees, and to the survivor of them, his or her heirs and assigns, **FOREVER**, all that certain piece or parcel of land situated in the Township of Onckama, County of Manistee, and State of Michigan, and further described as follows:

Lot Five (5), Block Twenty-five (25), Portage Point, according to the plat thereof as recorded in Liber 2-B of Plats, page 68, Manistee County Records.
PARCEL ID NUMBER: 31-11-410-055-00

Also assigning to Grantees all right, title and interest of Grantors under the license, hereinafter described, and subject to the terms of the license to continue the usage of a steel pipe under Portage Point Road as set forth in Liber 587, pages 718-720, Manistee County Records and amended License Agreement recorded in Liber 955, page 835, Manistee County Record.

Also subject to rights of the public in Avenue A (Portage Point Drive) as depicted in the Plat of Portage Point and as disclosed by instruments recorded in Liber 321, page 61, and in Liber 382, page 628, Manistee County Records.

Also subject to encroachment of retaining wall as disclosed by survey dated August 2, 2005. Jenema Land Surveys File #05175.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise pertaining; **TO HAVE AND TO HOLD** the said premises to the said Grantees, and to the survivor of them, his or her heirs and assigns, to the sole and only proper use, benefit and behalf of the said Grantees, and to the survivor of them, his or her heirs and assigns, **FOREVER**. And the said Grantors, for themselves, their heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said Grantees, the survivor of them, his or her heirs and assigns, that at the time of the delivery of these presents they are well seized of the above granted premises in fee simple, except as above described; that they are free from all encumbrances whatever and that they will, and his or her heirs, executors and administrators shall **WARRANT AND DEFEND** the same against all lawful claims whatsoever, except as above described.

(When applicable, pronouns and relative words shall be read as plural, feminine or neuter, respectively.)

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands the day and year first above written.

[Signature]
Alfred A. Turner
[Signature]
Susan Turner

STATE OF FLORIDA)
COUNTY OF LEE) SS.

On August 9th, 2005, before me, a Notary Public in and for said County, personally appeared Alfred A. Turner and Susan Turner, husband and wife, to me known to be the same persons described in and who executed the within instrument, who acknowledged the same to be their free act and deed.

(SEAL)



[Signature]
Notary Public, LEE County, FL
Acting in LEE County, FL
My Commission Expires: 10/8/2009

Prepared by:
GOCKFRMAN, WILSON, SAYLOR & HESSLIN, P.C.
By: ANIEL D. HESSLIN (P14919)
Attorneys at Law
414 Water Street
Manistee, MI 49660
(231) 3-3322
h:\dat\addh-r-z\turner\warranty deed.doc

Date 09/16/2005
This is to certify that there are no tax liens or titles on this property and that the taxes are paid for FIVE YEARS previous to the date of this instrument. This certification does not include taxes, if any now in the process of collection by the City, Village or Township Treasurer, or any denied Homestead Property Affidavit.
MANISTEE COUNTY TREASURER
(x) [Signature] Dep.

Exhibit 4

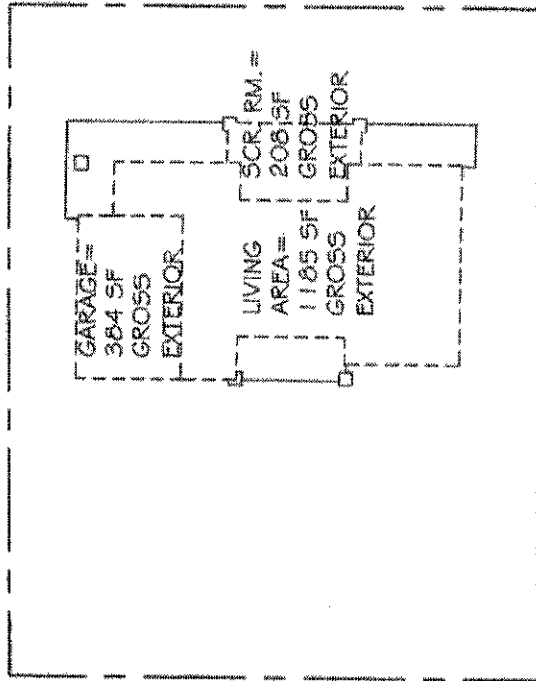
Impervious Surface Calculation with Portage Point Dr

Surface Area of road: $18.5 \times 79.75 = 1,475.37$ sq. ft.

Surface Area of home: 2,269 sq. ft.

$1,475 + 2,269 = 3,744$ sq. ft. total

$3,744 / 7,960 = \sim 47\%$ Impervious Surface Coverage



BUILDING
AREA

SCALE: 1/8" = 1'-0"



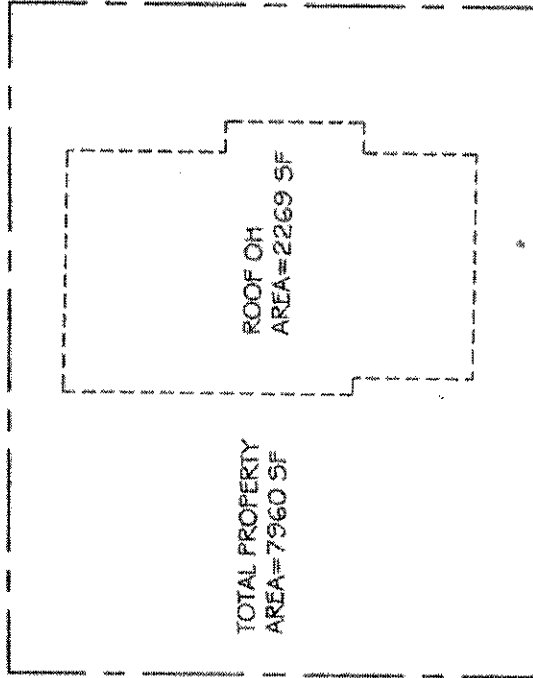
Impervious Surface Calculation w/o Portage Point Dr

Surface Area of home: 2,269 sq. ft.

Surface Area of parcel from west parcel line to east edge of road:
 $23 \times 79.75 = 1,834.25$ sq. ft.

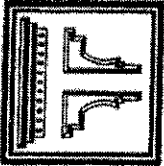
Surface Area of parcel from east edge of road:
 $7,960 - 1,834.25 = 6,125.75$

$2,269 / 6,125.75 = \sim 37\%$ Impervious Surface Coverage



ROOF AREA
VS.
PROPERTY AREA

SCALE: 1/8" = 1'-0"



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NO.	DESCRIPTION	DATE
1	PRELIMINARY PLAN SET	10/20/10
2	FINAL DEVELOPMENT PLAN SET	11/10/10
3	FINAL DEVELOPMENT PLAN SET	11/10/10
4	FINAL DEVELOPMENT PLAN SET	11/10/10
5	FINAL DEVELOPMENT PLAN SET	11/10/10
6	FINAL DEVELOPMENT PLAN SET	11/10/10
7	FINAL DEVELOPMENT PLAN SET	11/10/10
8	FINAL DEVELOPMENT PLAN SET	11/10/10
9	FINAL DEVELOPMENT PLAN SET	11/10/10
10	FINAL DEVELOPMENT PLAN SET	11/10/10
11	FINAL DEVELOPMENT PLAN SET	11/10/10
12	FINAL DEVELOPMENT PLAN SET	11/10/10

PROPOSED NEW DEVELOPMENT FOR:

THE COOK COTTAGE
PORTAGE POINT DRIVE
BLACKSBURG, VA

PROJECT TITLE: **GENERAL INFORMATION**

DATE	DATE	DATE	DATE
11/10/10	11/10/10	11/10/10	11/10/10
11/10/10	11/10/10	11/10/10	11/10/10
11/10/10	11/10/10	11/10/10	11/10/10

SCALE: 1/8" = 1'-0"

Exhibit 5

STATE OF MICHIGAN
IN THE COUNTY OF MANISTEE

J. ANDREW COOK and BARBARA COOK

Appellant,

Case No: 21-17456-AV

Hon. David A. Thompson

v

ONEKAMA TOWNSHIP,

Appellee,

v

CATHERINE BRADFORD,

Intervening Appellees.

**INTERVENOR RESPONSE IN
OPPOSITION TO APPELLANTS'
CLAIM OF APPEAL**

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**INTERVENOR RESPONSE IN OPPOSITION
TO APPELLANTS' CLAIM OF APPEAL**

Intervenor, Catherine Bradford through her attorney, Armin Schleiffarth P.C., states the following as her Response in Opposition to Appellants' Claim of Appeal:

1. As to the allegations contained in Paragraph 1, Intervenor admits that the Appellants have appealed a decision of the Onekama Township Zoning Board of Appeals (ZBA) but denies that “the Property” at issue is a platted Lot and denies that the Cooks’ Property is lawfully in existence under Act 288 of 1967 (“The Land Division Act” or LDA), and therefore can be legally used as a new building site.
2. Intervenor admits that Article 96 permits the ZBA to grant variances but denies that the Township, through its attorney or otherwise, has the authority to issue a land use permit for a building site on the Cook Property without causing a replat (“the process of changing, or the map or plat which changes, the boundaries of a recorded subdivision plat or the part thereof” see MCL 560.102(u).
3. Intervenor denies that Appellants own all of the Property at issue. Intervenor admits that platted Lot 5, Block 25 is substandard in size under the Zoning Ordinance. Intervenor expressly denies that the Cook Property is the original 1902 Lot 5 Block 25 of Portage Point. Furthermore, Intervenor denies Appellants’ characterization of the road. Since intervenor denies Appellants’ characterization of the Property and the road, she denies the percentage of the original Lot 5 Block 25 occupied by the road.
4. Intervenor admits that Appellants sought variances from the setback requirements in the Ordinance to allow construction of a home and attached garage on the Property. Intervenor denies that Appellants have no legal use of the Property without variances.

5. Intervenor denies that Appellants are aggrieved parties under MCL 125.3606 and MCR 7.112. Intervenor states that Appellants' grievance is the result of Michigan's Land Division Act.
6. Intervenor denies that Appellants are "aggrieved parties" because Appellants' Property is being regulated just like everyone else who owns an interest in lands included in the Plat of Portage Point. Particularly, Intervenor denies that Appellants have standing to bring *an appeal* without proceeding under the LDA, given the setback map the Appellants produced as part of their variance application. Intervenor also denies that the determination of the ZBA effected the legal use of the Cook's Property.
7. Intervenor admits that the Cook's property is in Manistee County and that Onekama Township is in Manistee County.
8. Intervenor:
 - a. Denies that the ZBA's decision to deny the variances was i) arbitrary, ii) capacious, or iii) an abuse of discretion granted to the ZBA by law. Additionally, Intervenor denies that Appellants satisfied all the standards for a variance in the ordinance.
 - b. Denies that the factual findings adapted and relied on by the ZBA in denying Appellants' variances were not supported by competent, material, and substantial evidence on the record.
 - c. Denies that the ZBA's decision does not comply with the United States Constitution or the Michigan Constitution and the associated laws of this State.

WHEREFORE, Intervenor requests that this Court uphold the Onekama Township Zoning Board of Appeal's decision and award Intervenor any other relief as justice so requires.

Respectfully Submitted,

Dated: March 3, 2022

/s/
Armin Schleiffarth (P81763)
Attorney for Intervenor