Brooks Township

January 12, 2021

Mr. Jeffrey Smith
4922 146th Ave.
Holland, MI 49423

Re: Variance Request

Parcel #62-19-33-399-024 (9435/9447 S. Catalpa Ave. Newaygo, MI 49337)

Dear Mr. Smith,

This letter is to inform you that at the Zoning Board of Appeals Hearing held on January 7, 2021 the Zoning Board of Appeals granted your request to add thirty-five (35) feet to your adjacent parcel from the above referenced parcel. The request was granted with the following two (2) conditions:

1. This change will not take place until the cottage at 9435 S. Catalpa Ave. is removed to satisfaction of the Township Zoning Office
2. The Township will waive the Land Division/Property Line Adjustment application fee

If you have any questions, please contact me.

Sincerely,
Joseph A Selzer

Joseph A. Selzer
Brooks Township Zoning Administrator
231-652-6763 ext1140
jselzer@brookstownship.org

Cc: Legal file

BROOKS TOWNSHIP ZONING BOARD OF APPEALS AGENDA

January 7, 2021 @ 3:30 PM

Teleconference Call In info – 1-872-240-3212

Access Code 616-186-997

1) Jeffrey Smith is asking for a variance request to reduce the required minimum lot width of the parcel at 9435/9447 S. Catalpa Ave., parcel #62-19-33-399-024

1. FY 2020/21 BUSINESS MEETING
2. ROLL CALL *(Janusz, Pitzer, Warren, Myers/McLeod)*
3. APPROVAL OF AGENDA
4. NEW BUSINESS
5. OLD BUSINESS
6. BOARD MEMBER COMMENT
7. PUBLIC COMMENT
8. CORRESPONDENCE
9. UNFINISHED BUSINESS
10. RECESS

11. HEARING CALLED TO ORDER *(statement that the proceedings are being recorded to assist in the accuracy of the minutes)*

12. REASON FOR HEARING - *See request noted above*
    A. Adjoining Property Owner Notification
    B. Review 'RULES OF PROCEDURE'
    C. Zoning Administrator Comments
    D. Applicate Presentation of Reason For Appeal
    E. Supporting Statements From Public
    F. Opposing Statement From Public
    G. ZBA Chairman Review *(Any reference made to any portion of the ZO needs to be read in full and stated in the minutes as such.)*
    H. ZBA Members Questions/Comments
    I. Final Rebuttal /Comments
    J. Hearing Closed To Public Comment

13. DELIBERATION BY THE ZBA
14. FINDING OF FACTS / STANDARDS OF REVIEW *(Facts must be stated for the record. Review standards one at a time.)*

15. MOTION & ROLL CALL VOTE *(Janusz, Pitzer, Warren, Myers/McLeod) (If decision is to be made at this hearing; if not, all attendees need to be notified of the next meeting date. See sign in sheet.)*

16. BOARD MEMBER COMMENT
17. PUBLIC COMMENT
18. NEW BUSINESS – Scheduled date for approval of minutes
19. CORRESPONDENCE
20. ADJOURNMENT

BROOKS TOWNSHIP
ZONING BOARD OF APPEALS HEARING
Jeffrey Smith
Parcel# 62-19-33-399-024
January 7, 2021
APPROVED

MEMBERS PRESENT: Frank Janusz, Mark Pitzer, Dave Warren, Greg Myers, Derrick McLeod

MEMBERS ABSENT: None

MEMBERS OF THE PUBLIC PRESENT: Joe Selzer

Chairman Janusz called a Teleconference meeting to order at 3:30 p.m. This meeting was properly posted and a quorum of the Brooks Township Zoning Board of Appeals was present. These minutes include an annual Business Meeting for 2020. Minutes are not a transcription as comments have been summarized for brevity and clarity.

APPROVAL OF AGENDA:
Moved by Pitzer, **seconded** by Myers to approve the agenda. **Approved Unanimously**

NEW BUSINESS – Election of New Officers
Moved by Myers, **seconded** by Pitzer to elect new members and retain the current board through 2/28/21, as follows: Frank Janusz – Chair; Dave Warren - Vice Chair; Mark Pitzer – Secretary; Greg Myers – Trustee; Derrick McLeod – Alternate Trustee. **Approved Unanimously**

UNFINISHSED BUSINESS – None

CORRESPONDENCE – None

BOARD MEMBER COMMENT

PUBLIC COMMENT – None

FOLLOWING A SHORT RECESS, CHAIRMAN JANUSZ OPENED THE PUBLIC HEARING

APPLICANT: Jeffery Smith present via teleconference

REASON FOR HEARING:
Chairman Janusz stated the hearing is the result of a variance request, by Jeffery Smith, to reduce the required minimum lot width of 100 feet in the Lakefront (LD) District, for the parcel at 9435/9447 S. Catalpa Ave., parcel # 62-19-33-399-024. Mr. Smith later amended his request to increase the amount added to his parcel from 30 to 35 feet. This would make his parcel conforming at 100 feet and the other parcel non-conforming at 75 feet.

ADJOINING PROPERTY OWNERS NOTIFICATION:
All property owners within 300 feet of the above parcel were notified with a copy of the Public Notice.

RULES OF PROCEDURE:
Chairman Janusz introduced himself and other board members and explained the order of procedure for the hearing.

ZONING ADMINISTRATOR COMMENTS: (See Staff Report for Variance Request filed 12/08/20)
Chairman Janusz reviewed the Staff Report submitted by Joe Selzer, ZA, which provides specific detail of the property location and background for the variance request. The Staff Report also outlined a series of six questions asked of the applicant, along with the applicant's response. The report concluded that each of the six standards were not met and recommended denial of the variance request.

APPLICANT PRESENTS REASONS FOR APPEAL:
Mr. Smith owns two (2) properties which have three houses on them. He wishes to remove the smaller cottage (9435 Catalpa) which is twelve inches from the property line, to allow "green space". This cottage has a 3-year lease with the previous owner, until September 2023 and he plans to remove it between 9/23 and 9/24. He was seeking a property line adjustment which originally involved 9435/9447 Catalpa, (currently 105 feet) and a second property at 9425 Catalpa (currently 65 feet). He originally wanted to add 30 feet to one and reduce the other by 30 feet, however he understands he would have two non-conforming lots. Instead, he wishes to amend his request from 30 feet to 35 feet. This would increase the parcel size at 9425 to 100 feet while decreasing the parcel size at 9435/9447 to 70 feet.

SUPPORTING/OPPOSING STATEMENTS FROM PUBLIC:
No supporting/opposing statements from the public were presented

ZBA CHAIRMAN REVIEW
Chairman Janusz read and reviewed the Staff Report and subsequent amended request submitted by the Zoning administrator (ZA).

ZBA MEMBERS QUESTIONS AND COMMENTS:
Q: Derrick McLeod asked if anyone lives in the cottage
R: Mr. Smith states there are two houses. 9447 Catalpa is larger and signed a one-year lease on that property beginning 1/01/21. The smaller house at 9425 is currently vacant.
Q: Greg Meyers asked if 9435 is vacant and if Mr. Smith guarantees to remove the cottage once the three-year lease is up.
R: Mr. Smith indicates he has a lease agreement that stipulates only the previous owner may lease the property. She is typically there from July 4th to Labor Day weekend each year. He guarantees to remove the cottage once the lease ends.
Q: Dave Warren asked for the purpose of moving the property line now as opposed to waiting.
R: Mr. Smith states that he is concerned about a potential change in zoning requirements. It's also easier for him to deal with paperwork now. He purchased the entire property with the intent to put 9447 back on the market as there is a lot of interest in that parcel.

FINAL REBUTTAL OR COMMENTS
No final rebuttal was presented

DELIBERATIONS BY THE ZBA:
Chairman Janusz closed the hearing to public comment at 3:49. He also indicated he was skipping over item 14 on the agenda, "Finding Of Facts/Standards Of Review".

MOTION & ROLL CALL VOTE
Moved by Pitzer, **seconded** by Myers to approve the amended variance request with conditions. The existing property line will be moved 35' south, creating a 70' parcel -024 and a 100' parcel -025.
Condition 1 – This change will not take place until the cottage at 9435 is removed to the satisfaction of the Township Zoning Office.
Condition 2 – The Township will forgive the fee to relocate this property line at that time.
He believes all 6 standards of a variance have been met to the benefit of the applicant and Township equally.
Ayes – All - Unanimously approved

BOARD MEMBER COMMENTS: Pitzer wants to ensure that the stipulated change will not take place until the cottage has been removed. Also, that the change will not take place if the cottage is not removed.

PUBLIC COMMENTS: None

NEW BUSINESS – Another Hearing is Scheduled 1/28/21 at 3:30; minutes for this meeting/hearing will be approved at that time.

ADJOURNMENT:
Meeting was adjourned by Chairman Janusz at 3:57 PM

RESPECTFULLY SUBMITTED

Frank Janusz Mark A Pitz (SECY)
ZBA Chairman

Dianna Schaafsma Dianna Schaafsma
ZBA Recording Secretary

Dianna Schaafsma

From: Joe Selzer
Sent: Thursday, January 7, 2021 8:22 AM
To: David Warren; Derrick McLeod; Dianna Schaafsma; Frank Janusz; Greg Myers; mpitzer@ncats.net
Subject: Smith Amended Variance Request
Attachments: Amended Variance Request.pdf

Members,

Mr. Smith has amended his variance request to increase the amount added to his parcel from 30 to 35 feet. This would make his parcel conforming at 100 feet and the other parcel would be non-conforming at 70 feet. Baslcally swapping the conforming and non-conforming parcels. Attached is a site plan. If you have any questions, please contact me.

Sincerely,

Joe Selzer
Brooks Township Zoning Administrator
231-652-6763 ext1140

JANUARY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

FEBRUARY

S	M	T	W	T	F	S
				1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

MARCH

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

APRIL

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

MAY

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

JUNE

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

JULY

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

AUGUST

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

SEPTEMBER

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

OCTOBER

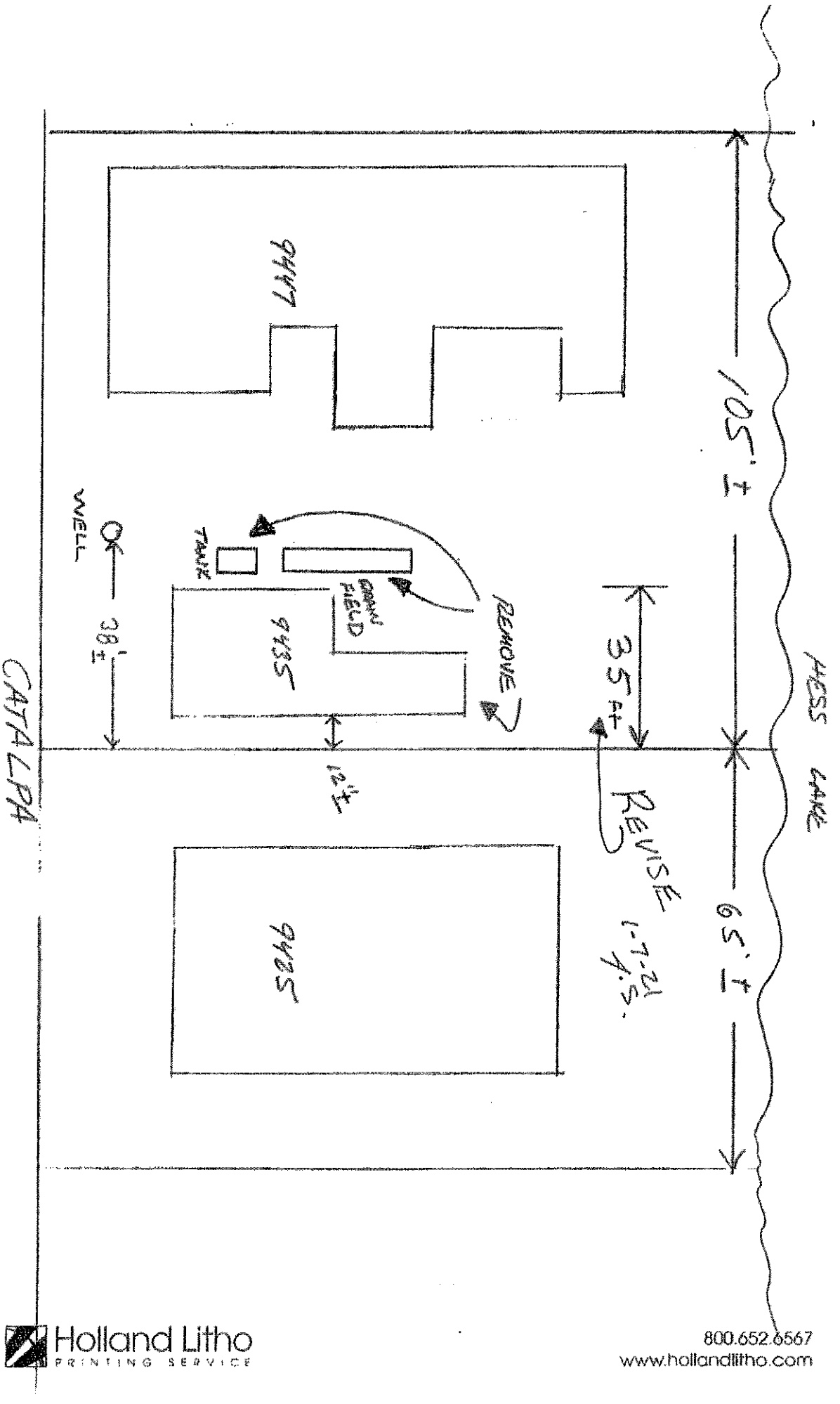
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

NOVEMBER

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

DECEMBER

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						



Holland Litho
PRINTING SERVICE

800.652.6567
www.hollandlitho.com

Staff Report

Variance Request
January 7, 2021

The property is located at 9435/9447 S. Catalpa Ave. Parcel #62-19-33-399-024. The variance request is for reduction of the required minimum lot width of 100 feet in the Lakefront (LD) District. The subject parcel is 104 feet in width. The applicant wants to take approximately 30 feet from the subject parcel and add it to his adjacent parcel 9425 S. Catalpa Ave. parcel #62-19-33-399-025. The subject parcel would be 74 feet in width (non-conforming) and the adjacent parcel would be 95 feet (less non-conforming in width). The subject parcel is non-conforming because there are two residences on the parcel. The adjacent parcel in non-conforming because it does not meet the minimum width requirement. Both parcels meet the required square footage requirement.

Dimensional Variance

Standards of Review

1. What exceptional or extraordinary circumstances or conditions apply to the property in question that do not apply generally to other properties in the same District and which would render use of the property as zoned impracticable or unnecessarily burdensome?

   "I have ownership of both properties listed which have 3 houses. My plan is to remove the smaller house and have "green space."

   Standard not met.

   The subject parcel had two residences prior to the creation of the Township Ordinance. By removing the "smaller house", the parcel becomes conforming and effect creates "green space" between the remaining houses.

2. What condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations?

   "I was seeking a property line adjustment but was informed that this request would create a non-conforming lot."

Standard not met.

An amendment to the Ordinance is neither reasonable nor practical. A reduction in the minimum lot width would potentially increase the density of an already densely populated area.

3. Why is the variance necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity and not just for the possibility of increased financial return?

"The smaller house we wish to remove is 12 inches from the property line."

Standard not met.

There are no property rights enjoyed by neighboring property owners that the applicant does not enjoy as well.

4. Why will granting the variance not be significantly detrimental to adjacent property and the surrounding neighborhood?

"Getting a property line adjustment will not effect the neighbors and the removal will only enhance the overall appearance."

Standard met.

Granting the variance will not be significantly detrimental to adjacent property owners and the surrounding neighborhood. Removal of the "smaller house" would enhance the property.

5. How will granting the variance not impair the intent and purpose of this Ordinance?

"By removing house it will bring parcels more into compliance with the current ordinance, along with the line adjustment."

Standard not met.

Removing the "smaller house" would bring the subject parcel into compliance (only one residence per parcel is allowed). However, the reduction of the lot width requirement would create another non-conforming parcel.

6. Explain how the immediate practical difficulty causing the need for the variance request was not created by any of your actions.

"Property was just purchased, we have taken no actions."

Standard not met.

The only difficulty is that the subject parcel has two residences that were on the parcel prior to the applicant's purchase. The immediate practical difficulty causing the need for a variance has not been demonstrated.

I do not believe that the property owner has presented a compelling and supported argument to grant the variance request. Only one (1) of the standards has been met. Therefore, I recommend that the Zoning Board of Appeals deny this variance request.

BROOKS TOWNSHIP
NEWAYGO COUNTY

NOTICE OF PUBLIC HEARING FOR
ZONING BOARD OF APPEALS

The Brooks Township Zoning Board of Appeals will hold a Public Hearing on January 7, 2021 at 3:300 p.m. at the Township Hall regarding a variance request by Jeffrey Smith.

The property for which the variance is requested is located at 9435/9447 S Catalpa Ave., parcel #62-19-33-399-024. The variance request is to reduce the required minimum lot width of the parcel.

Written comments may be addressed to Brooks Township Zoning Board of Appeals, PO Box 625, Newaygo, MI 49337. Comments must be received by the meeting date.

Jennifer Badgero
Brooks Township Clerk

Jeffery Smith Variance

PIN	OWNER_NAME	OWNER_ADDR	OWNER_CI	O_S	OWNER_P_ADDRESS
62-19-33-451-004	BRUNSTING LARRY D ET UX RUTH ANN	9351 CATALPA	NEWAYGO	MI	49337 9450 S CATALPA AVE
62-19-33-399-024	SMITH JEFFREY P TRUST	4922 146TH AVE	HOLLAND	MI	49423 9447 S CATALPA AVE
62-19-33-399-025	SMITH JEFFREY P ET UX KENLYN S	4922 146TH AVE	HOLLAND	MI	49423 9425 S CATALPA AVE
62-19-33-451-013	KRUEGER IDA TRUST ET AL	2053 E 95TH ST	NEWAYGO	MI	49337 2053 E 95TH ST
62-80-33-401-001					

Jeffrey Smith Variance

PIN	OWNER_NAME	OWNER_ADDR	OWNER_CITY	O_STATE	OWNER_ZI	P_ADDRESS
62-19-33-399-021	VANHOVEN RANDY ET UX	2724 BOSTON ST SE	GRAND RAPIDS	MI	49506	9451 S CATALPA AVE
62-19-33-399-024	SMITH JEFFREY P TRUST	4922 146TH AVE	HOLLAND	MI	49423	9447 S CATALPA AVE
62-19-33-399-025	SMITH JEFFREY P ET UX KENLYN S	4922 146TH AVE	HOLLAND	MI	49423	9425 S CATALPA AVE
62-80-33-401-001						
62-70-32-400-001						

BROOKS TOWNSHIP
ZONING BOARD OF APPEALS APPLICATION

Welcome To
Brooks Township
Newaygo County

Type of Request
- ☐ Administrative Appeal
- ☐ Ordinance Interpretation
- ☒ Variance

Address/Location of Subject Property: 9435 & 9447 S Catalpa
Parcel # of Subject Property: 62-19-33-399-024
Current Zoning & Use of Subject Property: Residential LD

Applicant Information:
Name: Jeff Smith Organization: —
Address: 4922 146th Avenue City/State/Zip: Holland MI 49423
Phone (H): 616 836 3697 Phone (W): 616 748-0600 Fax:

I hereby attest that all information on this application is, to the best of my knowledge, true and accurate.

Signature: Jeff Smith Date: 11-24-2020

I hereby grant permission for members of the Brooks Twp. (Zoning Board of Appeals) (Staff) to enter the property described below (or as described in the attached) for the purpose of gathering information related to this application. (Note to applicant: This is optional and will not affect any decision on your application)

Signature of Owner: Jeff Smith Date: 11-24-2020

Applicant is the: ☒ Owner ☐ Lessee ☐ Optionee ☐ Contractor/Architect

If the applicant is not the owner of the property, complete the following:
Owner's Name:
Address: City/State/Zip:
Phone: Signature:

List Deed Restrictions and Easements: N/A

Explanation of Request: Our request is to add 30' from parcel 62-19-33-399-024 to 19-33-399-025. This will make properties approximately 75' and 95'

With all requests, 7 copies of a Detailed Site Plan Drawing must be submitted.

TO BE COMPLETED BY TOWNSHIP

Date application received and accepted: 12/08/20
Receipt Number: 005279 Staff: JMS
Meeting Date (if applicable):

Note: Information contained in this application, as well as supporting documentation, may be subject to review by the public if a Freedom of Information Act Request is filed.

No variance will be granted unless the Zoning Board of Appeals finds reasonable evidence that all the following standards have been met. Please provide written evidence supporting each in the space provided. Please feel free to provide additional pages if necessary. See Article 20, 20.04 for more details on these standards.

1. **What exceptional or extraordinary circumstances or conditions apply to the property in question that do not apply generally to other properties in the same zoning district and which would render use of the property as zoned impracticable or unnecessarily burdensome?** *(i.e., Why is your property unique compared to others in the neighborhood? Why can't your property meet current zoning requirements?)*

I have ownership of both properties listed, which have 3 houses. My plan is to remove the smaller house and have "green space."

2. **What condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations?** *(i.e., Why is an amendment to the Zoning Ordinance not a more reasonable and practical alternative to granting a variance?)*

I was seeking a property line adjustment but was informed that this request would create a non-conforming lot.

3. **Why is the variance necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity and not just for the possibility of increased financial return?** *(i.e., What property rights do your neighbors enjoy that you can't because of the nature of your property?)*

The smaller house we wish to remove is 12" from property line.

4. **Why will granting the variance not be significantly detrimental to adjacent property and the surrounding neighborhood?** *(i.e., Will granting a variance to you negatively affect your neighbors?)*

Getting a property line adjustment will not effect neighbors and the removal will only enhance the overall appearance.

5. **How will granting the variance not impair the intent and purpose of this Ordinance?**

By removing house it will bring parcels more into compliance with the current ordinance, along with line adjustment.

6. **Explain how the immediate practical difficulty causing the need for the variance request was not created by any of your actions.**

Property was just purchased, we have taken no actions.

Networkneighborhood/rentalcomputer/equalw/sharedzoningdocuments/forms/zbaapplicationform.doc

JANUARY

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

FEBRUARY

	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

MARCH

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

APRIL

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

MAY

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

JUNE

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

JULY

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

AUGUST

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

SEPTEMBER

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

OCTOBER

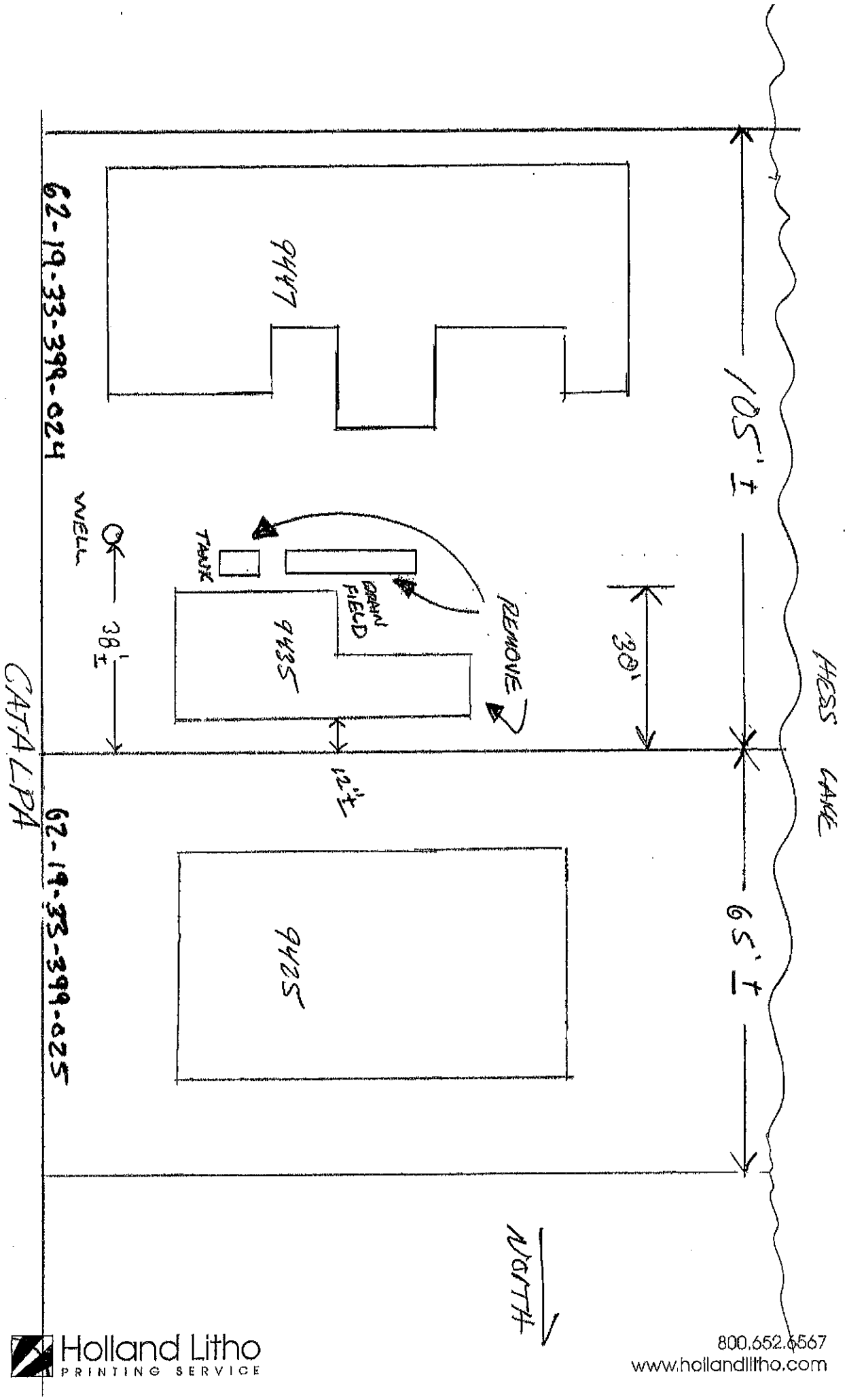
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

NOVEMBER

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
1	20	21	22	23	24	25
26	27	28	29	30		

DECEMBER

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						



Holland Litho
PRINTING SERVICE
800.652.6567
www.hollandlitho.com

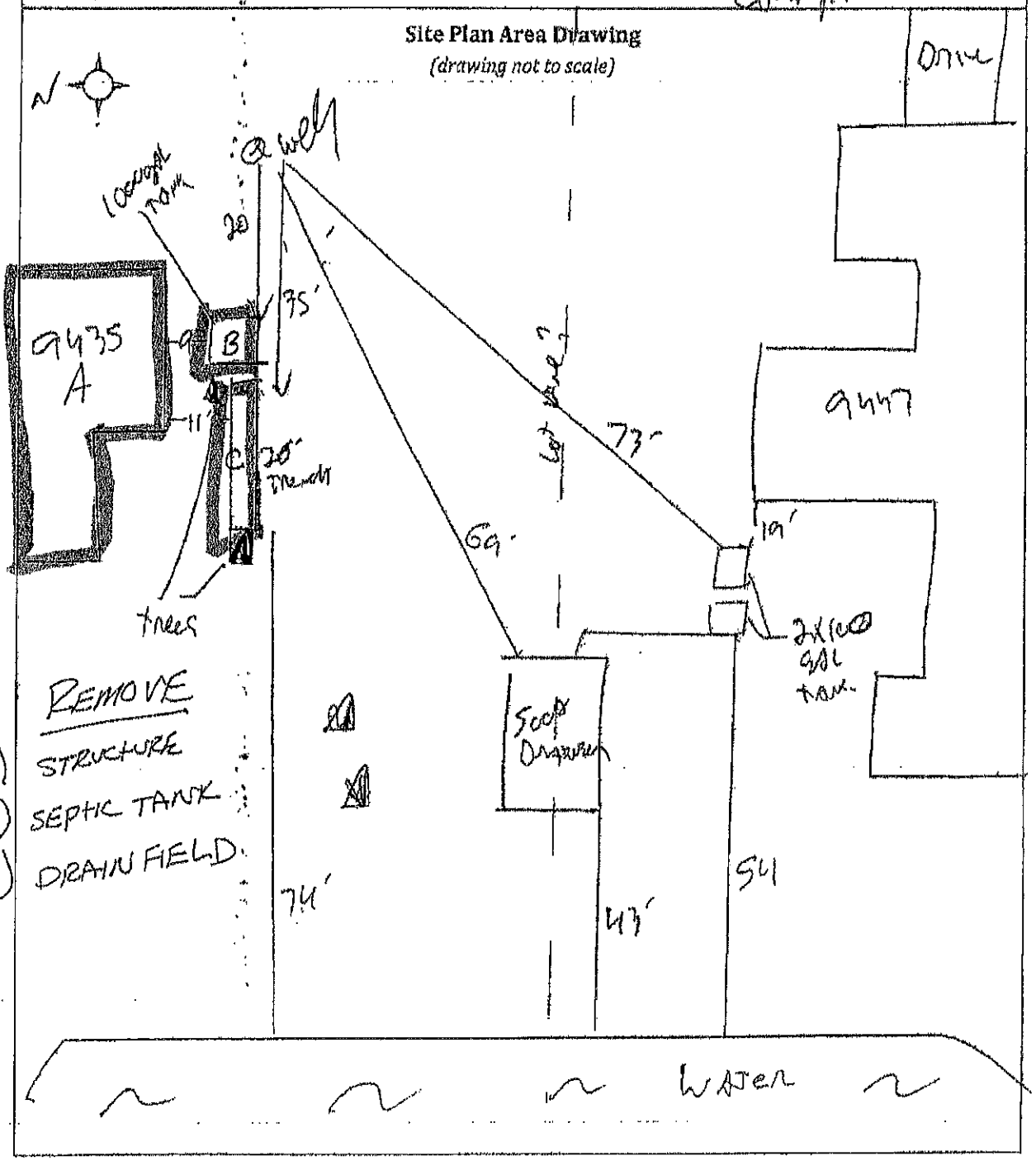
NORTH

Site Plan

Septic Permit #: 1850	Well Permit #: 32976
Site Address: 9447 S Catalpa Avenue / 9435 CATALPA	
Property Tax ID #: 62-19-33-399-024	CATALPA

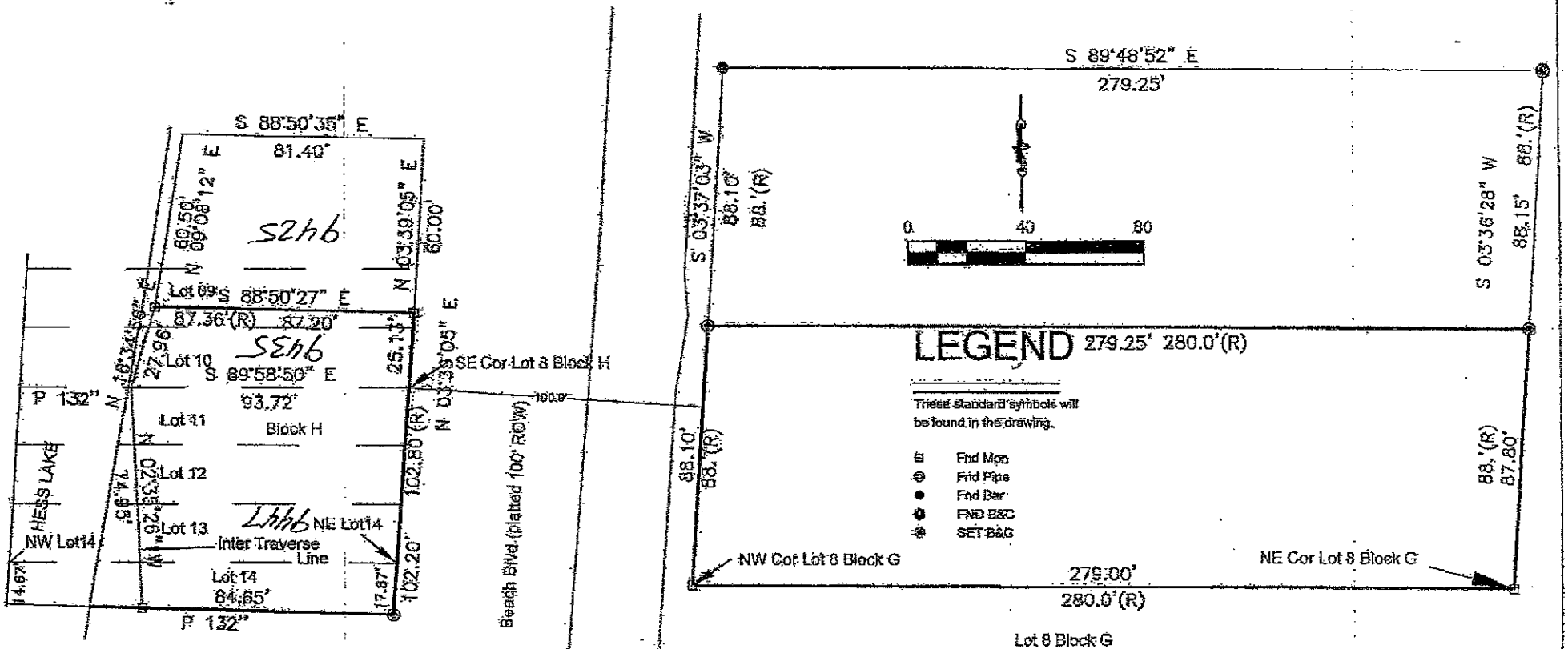
Site Plan Area Drawing

(drawing not to scale)



Certificate of Survey

See Legal Description Page 2



THE SURVEYOR'S LIABILITY FOR ANY AND ALL CLAIMS, INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF THE SURVEYOR'S PROFESSIONAL SERVICES, NEGLIGENCE, GROSS MISCONDUCT, WARRANTIES OR MISREPRESENTATIONS SHALL BE DEEMED LIMITED TO AN AMOUNT NO GREATER THAN THE SERVICE FEE.

Nordlund Surveying
6803 Croton Hardy Dr
Office (231) 924-6932
www.Nordlundsurveying.com

I, GERALD A. NORDLUND, A REGISTERED SURVEYOR IN THE STATE OF MICHIGAN, HEREBY CERTIFY THAT I HAVE SURVEYED THE PARCEL(S) OF LAND DESCRIBED AND DELINEATED HEREON; THAT SAID PLAT IS A TRUE REPRESENTATION OF THE SURVEY AS PERFORMED BY ME AND THAT SAID SURVEY WAS PERFORMED WITH AN ERROR OF CLOSURE NOT GREATER THAN 1 IN 5000; AND THAT I HAVE FULLY COMPLIED WITH THE REQUIREMENTS OF ACT 132, PUBLIC ACT OF 1970, AS AMENDED. THIS SURVEY WAS MADE FROM THE ATTACHED LEGAL DESCRIPTION. THE DESCRIPTION WAS GIVEN TO US BY OTHERS, OR WAS PREPARED BY US FROM INFORMATION OR DOCUMENTS GIVEN TO US BY OTHERS AND SHOULD BE COMPARED WITH THE ABSTRACT OF TITLE OR TITLE INSURANCE POLICY FOR ACCURACY, EASEMENTS OR EXCEPTIONS.

Jeff Smith	Page 1 of 2
9447 S Catalpa Avenue	
Newaygo	Michigan 49337
11 Sept 2020	NS20-08-004

GERALD A. NORDLUND PROFESSIONAL SURVEYOR #57157
NOT VALID UNLESS EMBOSSED WITH SEAL

Certificate of Survey

Legal Description Provided:
All of Lot 10, and that part of Lot 9, Block H, Hessbrook Resort No. 2, according to the Plat thereof as recorded in Liber 1 of Plats, Page 50, Newaygo County Records, described as: Commencing at the Southeast corner of said Lot 10; thence North 89 ° 58' 50" West (recorded as West) 93.72 feet (recorded as 132 feet) to a meander traverse line; Thence North 16 ° 34' 56" East 27.96 feet to the end of said meander line; Thence South 88 ° 50' 27" East 87.36 feet to East line of said Lot 9; Thence South 03 ° 39' 05" West 25.13 feet along the said East line of Lots 9 and 10 to the Point of Beginning.
ALSO:
All of lots 11, 12, 13, Block H, Hessbrook Resort No. 2, according to the Plat thereof as recorded in Liber 1 of Plats, Page 50, Newaygo County Records.
ALSO:
All of that part of Lot 14, Block H, Hessbrook Resort No. 2, according to the Plat thereof as recorded in Liber 1 of Plats, Page 50, Newaygo County Records, lying North of a line described as: Commencing at a point South 17 feet 8 inches along the East line from the Northeast corner of said Lot; Thence Northwesterly to a point 14 feet, 8 inches South of the Northwest corner of said Lot.
ALSO:
Including all lands lying between said lots and Hess Lake.
ALSO:
That part of Section 38, Town 12 North, Range 12 West, Brooks Township, Newaygo County, State of Michigan, described as:
Commencing at the Northwest corner of Lot 8, Block G, Hessbrook Resort No. 2, according to the Plat thereof as recorded in Liber 1 of Plats, Page 50, Newaygo County Records; Thence North 88 feet; Thence East parallel to the North line of said Lot 8, 280 feet to the West line of Lot 7, said block G; Thence South along said West line to the Northeast corner of said Lot 8; Thence West along the North line of said Lot 8 to the Point of Beginning.
Township, Newaygo County, State of Michigan

SUBJECT TO THE RIGHTS OF THE PUBLIC AND OF ANY GOVERNMENTAL UNIT IN ANY PART OF THE LAND TAKEN, USED OR DEEDED FOR STREET, ROAD OR HIGHWAY PURPOSES AND SUBJECT TO ANY EASEMENTS, RESTRICTIONS OR RESERVATIONS OF RECORD.

I, GERALD A. NORDLUND, A REGISTERED SURVEYOR IN THE STATE OF MICHIGAN, HEREBY CERTIFY THAT I HAVE SURVEYED THE PARCEL(S) OF LAND DESCRIBED AND DELINEATED HEREON; THAT SAID PLAT IS A TRUE REPRESENTATION OF THE SURVEY AS PERFORMED BY ME AND THAT SAID SURVEY WAS PERFORMED WITH AN ERROR OF CLOSURE NOT GREATER THAN 1 IN 5000; AND THAT I HAVE FULLY COMPLIED WITH THE REQUIREMENTS OF ACT 132, PUBLIC ACT OF 1970, AS AMENDED. THIS SURVEY WAS MADE FROM THE ATTACHED LEGAL DESCRIPTION, THE DESCRIPTION WAS GIVEN TO US BY OTHERS, OR WAS PREPARED BY US FROM INFORMATION OR DOCUMENTS GIVEN TO US BY OTHERS AND SHOULD BE COMPARED WITH THE ABSTRACT OF TITLE OR TITLE INSURANCE POLICY FOR ACCURACY, EASEMENTS OR EXCEPTIONS.

Nordlund Surveying
6803 Croton Hardy Dr
Office (231) 224-6932
www.Nordlundsurveying.com

THE SURVEYOR'S LIABILITY FOR ANY AND ALL CLAIMS, INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF THE SURVEYOR'S PROFESSIONAL SERVICES, NEGLIGENCE, GROSS MISCONDUCT, WARRANTIES OR MISREPRESENTATIONS SHALL BE DEEMED LIMITED TO AN AMOUNT NO GREATER THAN THE SERVICE FEE.

Jeff Smith
6775 Four Seasons Drive
Newaygo, Michigan 49337
11 Sept 2020 NS20-08-004

GERALD NORDLUND PROFESSIONAL SURVEYOR #57157
NOT VALID UNLESS EMBOSSED WITH SEAL

BROOKS TOWNSHIP
ZONING BOARD OF APPEALS APPLICATION

Welcome To Brooks Township Newaygo County

Type of Request

- ☐ Administrative Appeal ($350)
- ☐ Ordinance Interpretation ($350)
- ☒ Variance ($350)

Address/Location of Subject Property: 9447 and 9435 Catalpa Avenue

Parcel # of Subject Property: 19-33-399-024

Current Zoning & Use of Subject Property: R-1 and L.O / current use = residential

Applicant Information:

Name: Charles E. Magee Trust and Marilyn M. Magee Trust Organization:

Address: 9447 Catalpa Avenue City/State/Zip: Newaygo, MI 49337

Phone (H): (231) 652-7269 Phone (W): Fax:

I hereby attest that all information on this application is, to the best of my knowledge, true and accurate.

Signature: x Marilyn M. Magee Charles E. Magee Date: x 10-10-05

I hereby grant permission for members of the Brooks Twp. (Zoning Board of Appeals) (Staff) to enter the property described below (or as described in the attached) for the purpose of gathering information related to this application. (Note to applicant: This is optional and will not affect any decision on your application)

Signature of Owner: x Marilyn M. Magee Charles E. Magee Date: x 10-10-05

Applicant is the: ☒ Owner ☐ Lessee ☐ Optionee ☐ Contractor/Architect

If the applicant is not the owner of the property, complete t

Owner's Name:

Address: City/State/Zip:

Phone: Signature:

Previous Variance Request 2006

List Deed Restrictions and Easements:

Explanation of Request: see attachment

With all requests, 6 copies of a Detailed Site Plan Drawing must

TO BE COMPLETED BY TOWNSHIP

Date application received and accepted: Nov 30, 2005

Receipt Number: 6108 Staff: WBender

Meeting Date (if applicable): Jan 10, 2006

Note: Information contained in this application, as well as supporting documentation, may be subject to review by the public if a Freedom of Information Act Request is filed.

No variance will be granted unless the Zoning Board of Appeals finds reasonable evidence that all the following standards have been met. Please provide written evidence supporting each in the space provided. Please feel free to provide additional pages if necessary. See Article 20, 20.04 for more details on these standards.

1. **What exceptional or extraordinary circumstances or conditions apply to the property in question that do not apply generally to other properties in the same zoning district and which would render use of the property as zoned impracticable or unnecessarily burdensome?** *(i.e., Why is your property unique compared to others in the neighborhood? Why can't your property meet current zoning requirements?)*

   see attachment

2. **What condition or situation of the specific piece of property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations?** *(i.e., Why is an amendment to the Zoning Ordinance not a more reasonable and practical alternative to granting a variance?)*

   see attachment

3. **Why is the variance necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity and not just for the possibility of increased financial return?** *(i.e., What property rights do your neighbors enjoy that you can't because of the nature of your property?)*

   see attachment

4. **Why will granting the variance not be significantly detrimental to adjacent property and the surrounding neighborhood?** *(i.e., Will granting a variance to you negatively affect your neighbors?)*

   see attachment

5. **How will granting the variance not impair the intent and purpose of this Ordinance?**

   see attachment

6. **Explain how the immediate practical difficulty causing the need for the variance request was not created by any of your actions.**

   see attachment

ATTACHMENT TO APPLICATION FOR VARIANCE

Explanation of Request.

1. History of Property. The property that is the subject of the variance request is a portion of PPN 19-33-399-024 and legally described as follows:

> Part of Lot 9, Block H, lying south of a line commencing 23.13 feet N 03 degrees 39'05"E of the SE corner of Lot 10, thence N88 degrees 50'27"W to the shore of lake. Also, Lots 10 thru 14 except that part of Lot 14 lying southerly of a line 17 feet, 8 inches South of the Northeasterly corner of said Lot and a point 14 feet, 8 inches South of the Northwesterly corner of said lot, Block H. Also Commencing at the Northwest corner of Lot 8 Block G, Thence E 280 feet, N 88 feet, West 280 feet, thence South 88 feet to the point of beginning, Block G, Hessbrook Resort No. 2.

Lots 9 thru 14 are contiguous waterfront lots. The portion of the property in Block G is across the street. (See attached map)

Lots 9 and 10 of Block H and Lot 8 Block G were purchased by Mr. and Mrs. Magee on July 12, 1980 on Land Contract. Lots 11 thru 14 were purchased on April 11, 1991. The sellers in these conveyances were different parties and, therefore, the property was under separate ownership prior to 1991. Currently, all of the lots constituting PPN 19-33-399-024 are owned by the Marilyn M. Magee Trust (an undivided ½ interest) and the Charles E. Magee Trust (an undivided ½ interest). At the time the lots were purchased and continuing to the present, the house has been situated on Lots 9 and 10, Block H and another house on Lots 11 -14, Block H. The property in Block 8 continues to remain vacant property.

Between the time the lots were purchased and the present, the lots were combined under one PPN for tax purposes.

2. Requested Action. The applicants are seeking to separate Lots 9, 10 and 11, Block H from Lots 12-14, Block H. A copy of a survey is attached to the application. The property in Block G would remain with Lots 12-14, Block H. Applicants seek to reverse the action which combined the properties and resulted in two principal structures on one parcel. The Applicants would continue to live in the house situated on Lots 12-14. The Applicant's daughter seeks to purchase the house on Lots 9, 10 and 11. A variance is sought to separate two nonconforming lots under common ownership. The proposed resulting parcels will not meet the minimum front

lot width or rear lot width. The proposed lots would have a front lot width of 45.07 (Lots 9-11) and 57.54 (Lots 12-14). The rear lot width at the high water mark would be 47.52 and 55.12 respectively. At least one of the proposed resulting parcels will also not meet the minimum lot size. The lot area of Lots 9-11 would be .09 acres (3,920 sq. ft.). The lot area of Lots 12-14 would be .12 acres (5,227.2 sq. ft.) exclusive of the square footage from Lot 8 Block G which is across the street but included in the same tax parcel number. The square footage of Lot 8 Block G is 24,640 square feet (88 sq. ft x 280 sq ft.).

1. The property at question is unique in that two principal structures exist under one tax parcel. Prior to the combination of the lots, each house was situated on a separate tax parcel. Since the Township's Zoning Ordinance only permits one principal residence per parcel, the combination of the two tax parcels created a nonconforming situation. It is necessary to create two tax parcels in order to only have one principal structure per tax parcel.

2. The property is unique in that two principal structures are located on one tax parcel which is not a general or recurrent nature in the immediate area or the Township as a whole. Amending the Zoning Ordinance to make the situation conforming is impractical unless the Township does not want to allow more than one principal structure per parcel or reduce the minimum lot size or minimum width requirements so as make a variance unnecessary in this situation.

3. A variance is necessary to allow the applicants to sell one house and remain in the other house. The applicants' neighbors do not have this problem as only one house exists per tax parcel.

4. Granting the requested variances will not be a significant detriment to adjacent properties and the surrounding neighborhood because the property will continue to be used as it is. No additional house will be constructed and no additional building site will be created so as to increase the density. Minimum lot sizes and minimum lot widths are generally tools used to limit the density in the zoning district. Furthermore, the separation of the lots will occur between the two houses as opposed to an exterior boundary. Finally, many of the lots in the area are legally nonconforming lots in that they do not meet the minimum lot size and/or minimum lot width requirements.

5. Granting a variance will not impair the intent and purpose of the Zoning Ordinance in that no additional houses will be constructed and no additional building site will be created. Rather, the intent and purpose of the Zoning Ordinance will be furthered by the fact that the property will become conforming with respect to Section 3.17c of the Zoning Ordinance which states in part that "No lot may contain more than one principal building or use."

6. The present situation was not created by the applicants in that the two houses existed prior to the two tax parcels being combined into one parcel.

BROOKS

Pay by mail to:
CHRISTINA HAYNOR
BROOKS TOWNSHIP
490 QUARTERLINE ROAD
PO BOX 625
NEWAYGO MI 49337

2005 SUMMER TAXES

[redacted]

MESSAGE TO TAXPAYER

TAXES DUE 7/1/05 - 9/14/05. AFTER 9/14/05 THE STATE IMPOSES A LATE FEE OF 1% PER MONTH OR FRACTION THEREOF CHARGED TO THE BASE AMOUNT UNTIL PAID. THERE WILL BE AN ADDITIONAL 3% PENALTY IF PAID LATE BETWEEN 2/15/06 AND 03/01/06. AFTER THAT THE TAXES WILL GO DELINQUENT TO THE NEWAYGO COUNTY TREASURER.

Prop #: 19-33-399-024
MAGEE CHARLES E ET UX
9447 S CATALPA AVE
NEWAYGO MI 49337

PAYMENT INFORMATION

2005 Summer
This tax is due by: 09/14/2005

TAXES COLLECTED AT BROOKS TOWNSHIP HALL, 490 QUARTERLINE, MON - THURS FROM 9AM-12PM & 1PM-3PM; FRIDAY 9AM-12PM PH(231) 652-6763 EXT. 13. MAIL PAYMENT TO BROOKS TOWNSHIP TREASURER, P.O. BOX 625, NEWAYGO, MI 49337. (NO CASH PLEASE) RETURNED CHECK CHARGE - $15.00. RECEIPT RETURNED BY MAIL.

PROPERTY INFORMATION

Property Assessed To:
MAGEE CHARLES E ET UX
9447 S CATALPA AVE
NEWAYGO, MI 49337

School: 62070
NEWAYGO

Prop #: 19-33-399-024
Prop Addr: 9447 S CATALPA AVE

Legal Description:

11, 12, 13, Part 14

PART OF LOT 9, BLK H, LYING S OF A LINE COM 25.13 FT NEGO 39°35'E OF NE COR LOT 10, TH NEGO 50°27'E TO SHORE OF LAKE, ALSO LOTS 10 THRU 14 EXC THAT PART LOT 14 LYING S'LY OF A LINE 17 FT 8 INCHES S OF NE'LY COR SD LOT & A POINT 14 FT 8 INCHES S OF NE'LY COR SD LOT, BLK H, ALSO COM AT NW COR LOT 8 BLK G, TH E 780 FT, N 88 FT, W 780 FT, S 88 FT TO POB BLKS H & G HEISSBROOK RESORT NO.3

BALANCE OF DESCRIPTION ON FILE

Mortgage Account:

	TAX DETAIL	DDA
Taxable Value:	51,179	RESIDENTIAL REAL
State Equalized Value:	85,600	Class: 401
P.R.E. Exemption %:	100.0000	Mort Code:

Taxes are based upon Taxable Value.
1 mill equals $1.00 per $1000 of Taxable Value.
Amounts with no millage are either Special Assessments or other charges added to this bill.

DESCRIPTION	MILLAGE	AMOUNT
STATE ED TAX	6.00000	307.07
NEWAYGO COUNTY	1.79940	92.09

[redacted]

Total Mills	7.79940	
Total Tax		399.16
Administration Fee		3.99
TOTAL AMOUNT DUE		403.15

P.R.E. Exemption Has Reduced This Bill By: 0.00

OPERATING FISCAL YEARS

The taxes on bill will be used for governmental operations for the following fiscal year(s):

County:	10/01/05	-	09/30/06
Twn/City:	04/01/05	-	03/31/06
School:	07/01/05		06/30/06
State:	10/01/05	-	09/30/06

Does NOT effect when the tax is due or its amount.

Please detach along perforation. Keep the top portion.
PLEASE RETURN THIS PORTION WITH PAYMENT. THANK YOU.

Bill # 02656

Mort Code

2005 Summer Tax for Prop #: 19-33-399-024
Make Check Payable To: CHRISTINA HAYNOR

This tax is due by: 09/14/2005
After 09/14/2005 additional fees and interest apply.
DDA:
Property Addr: 9447 S CATALPA AVE

[redacted]

TAXPAYER NOTE: Are your name & mailing address correct? If not, please make corrections below. Thank You.

MAGEE CHARLES E ET UX
9447 S CATALPA AVE
NEWAYGO MI 49337

Amount Remitted: _____

Mortgage Account:

Part of Lot 9, 10 = 40' - cottage

11, 12, 13 Part of 14 = 60' House

Memorandum

December 5, 2005

1-10-05
All NO
Variance Denied

To: Zoning Board of Appeals Members

From: Warren Bender

Subject: Magee Trust Variance Request, 9447/9435 Catalpa Ave

The purpose of this memo is to provide you with my comments regarding the above noted variance request.

Mr. and Mrs. Magee purchased part of lot 9 and 10 of Blk H which contained a small residence in 1980 (9435 Catalpa). The deed for this parcel was registered in 1987. In 1991, Mr. and Mrs. Magee purchased lots 11 through 14 of Blk H. This parcel contained a residence that the Magee's currently reside in (9447 Catalpa). Each residence had its own address at time of purchase and continues to have its own address.

March of 1990, Mr. Magee wrote a letter to the Brooks Township Board of Review requesting a change of value of his properties. In "C" of this letter he states that the "cottage" has not been improved and they are planning to tear it down. At the time the letter was written the residences were on individual parcels and not combined. The parcel referred to in "C" is located at 9435 Catalpa.

Sometime after March 1990 both of the Magee's lakefront parcels and a back parcel were combined into one parcel with only the residence located at 9447 Catalpa on the tax rolls. The residence located on lots 9 and 10 (9435 Catalpa) was not listed, possibly due to the letter stating that it was to be torn down.

Both residences came to my attention this past summer when I was contacted about the possibility of selling the cottage at 9435 Catalpa to the owner's daughter. I checked the address's and determined that all lots had been combined into one parcel. Mr. Magee, owner of the property claimed no knowledge of combining these lots.

I located a Zoning Compliance Permit issued in 1998 for the cottage located at 9435 Catalpa for a deck replacement. There were two permits located for 9447 Catalpa. One permit in 1996 to construct an addition and the other in 1997 to work on the deck. I was unable to locate any permits for the remodeling at 9435 Catalpa.

Each residence is believed to have its own electric service, well and septic. The wells, utilities and part of both residences are on the road right of way. The road right of way is

100 feet along this section of Catalpa. It is not uncommon for existing properties to have buildings encroaching on the road right of way along this stretch of road.

Mr. Magee is requesting to divide this parcel so that each residence would be on its own. Lots #9, #10 and #11 containing the cottage and Lots #12, #13, #14 and the back lot which would contain the main residence. The purpose of this request is to sell lots #9, #10 and #11, to his daughter, who has been using the cottage as her own for several years.

This parcel currently contains 33,787 square feet with a lot width at the water and road of 102.6 feet. The proposed split would take this parcel and divide it as follows.

The parcel containing the cottage would have 47.52 feet of waterfront and 45.07 feet road frontage. The existing building setback on the north side would be maintained. The south setback to the division line would be approximately 37 feet. This parcel would contain approximately 3,920 square feet.

The parcel containing the main house would have 55.12 feet of water frontage and 57.54 feet road frontage. The south building setback would be maintained at approximately 2 feet. The north building setback to the division line would be approximately 22 feet. This parcel would contain approximately 29,867 square feet, which includes the back lot.

The parcel size for a conforming lot within the Lakefront Overlay District is 18,000 square feet. The minimum width is 100 feet. The side setbacks for construction on a conforming lot would be a minimum of 15 feet on one side and a minimum of 25 feet on the other side. Waterfront setback is 50 feet and the road side setback is 25 feet.

The proposed land division would create a substandard parcel with only 47.52 feet at the water (100' required) and 3,920 square feet (18,000 sq. feet required). The second parcel would have enough square footage for lot area, 29,867 sq. ft., but would reduce the waterfront width to 55.12 feet (100 required).

To grant a variance the Board must determine if there is a practical difficulty on the part of the applicant that make his/her situation different from other property owners in the area.

20.04 STANDARDS OF REVIEW

A variance may be allowed by the Zoning Board of Appeals only in cases where there is reasonable evidence of practical difficulty in the official record of the hearing and that all of the following conditions are met.

1. That there are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same District and which would render use of the property as zoned impracticable or unnecessarily burdensome.

RD

The parcel in question has two dwellings on it. Most of the other properties within the Township have only one dwelling per parcel as required by ordinance. Some of the parcels located within the Lake Front District are undersized, both in waterfront width and area.

2. That the condition or situation of the specific piece or property for which the variance is sought is due to circumstances which are unique to the property and not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situations. Unique circumstances include, but shall not be limited to, exceptional narrowness, shallowness or shape of a specific property: unusual topographic conditions or the presence of other significant natural features such as wetlands; a situation on the land, building or structure immediately adjoining the property in question such that the literal enforcement of the requirements of this Ordinance would involve practical difficulties for the subject site; and, other such factors as the Board shall deem unique.

There are two dwellings located on this parcel. The parcels were allowed to be combined as one even though a dwelling was located on each parcel. Each dwelling has its own utilities, well, septic and address.

3. That the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same District and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

The denial of this variance would not deny the property owner the use of the property as it has been used by the owner's daughter for the past several years. Its continued use by the owner's daughter is expected whether the variance is granted or denied.

4. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.

This parcel has been utilized as two separate dwellings with their own utilities, septic, well and address. A variance would not be detrimental to adjacent property or surrounding neighborhood. could

could be rebuilt - larger?

5. The variance will not impair the intent and purpose of this Ordinance

The intent and purpose of the Ordinance is to have only one dwelling on a parcel and to set specific standards for lots around the Lakes to control environmental concerns such as saturation of septic systems, lake pollution, population, etc. The standard for this zoning district is 100 ft frontage and a total lot area of 18,000 Square feet. This variance could impair the environmental concerns and would allow substandard parcel sizes.

6. That the immediate practical difficulty causing the need for the variance request was not created by any action of the applicant.

   These parcels were combined by the current property owner. This combination made the parcels conforming in both width (waterfront) and area. At the time of combination each parcel contained a dwelling. The property owner was planning on removing the "cottage" at 9435 Catalpa. The cottage was not removed and now the owner wishes to split the property.

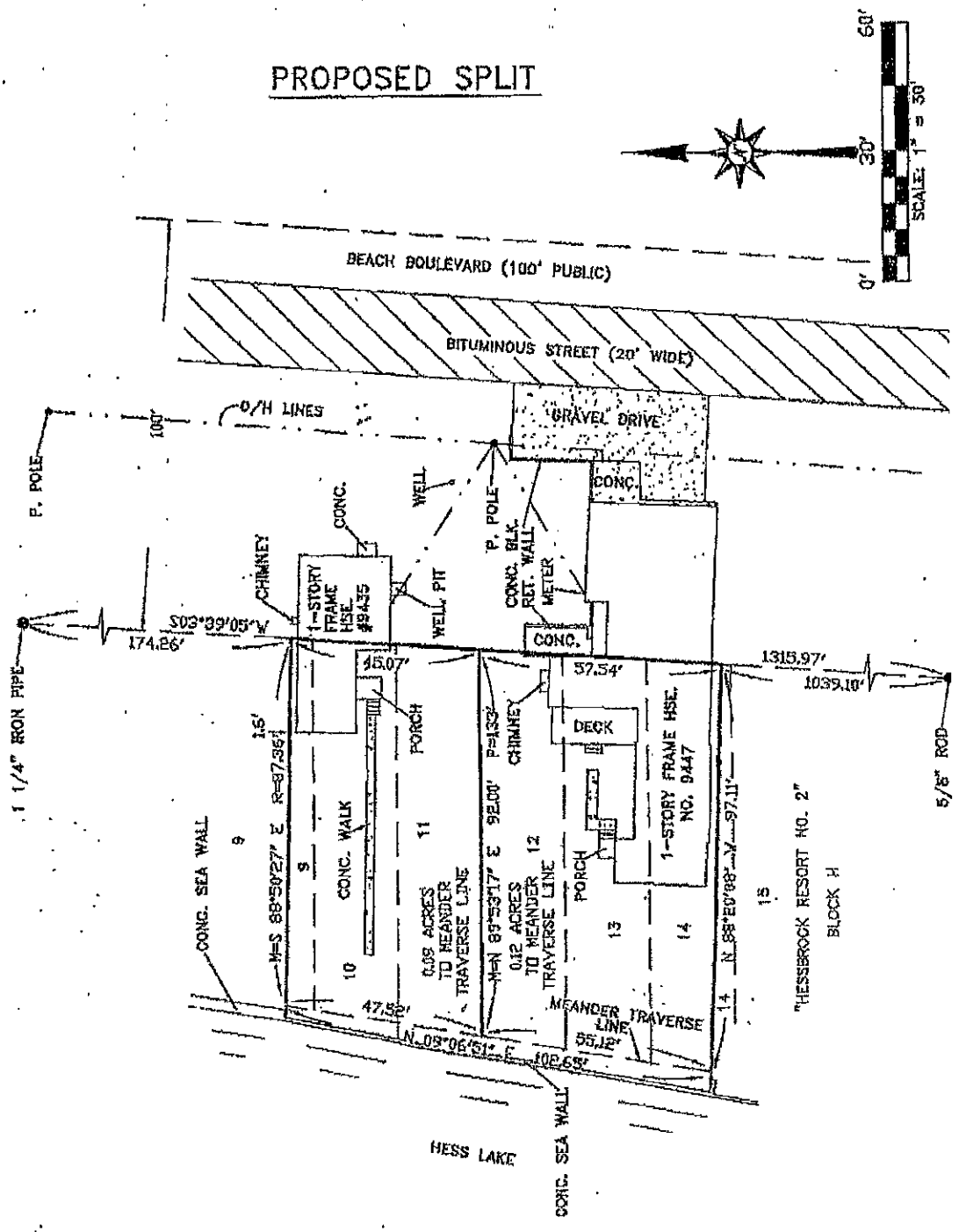
It is my recommendation that this request does not represent a specific practical difficulty as its current use could be continued. A variance would allow a reduction of lot width (waterfront) for both parcels created and a reduction of lot size for one of the created parcels.

SURVEY CERTIFICATE

SURVEY FOR:
REBECCA AND CHARLES KOVALESKI
4120 GABRIELLA LANE
WINTER PARK, FLORIDA 32792

PART OF BLK. H OF "HESSBROOK RESORT NO. 2", SEC. 3
T12N R12W, BROOKS TWP., NEWAYGO COUNTY, MICHIGAN.

PROPOSED SPLIT



Norman L. Ochs

Norman L. Ochs, R.L.S. #22439

SCALE:	1" = 30'	DRAWING NO.	05154LSM	DATE:	08-09-05
DRAWN BY:	B.D.K.				

NEWAYGO ENGINEERING & SURVEY CO.
274 NORTH CHARLES STREET (M-37) WHITE CLOUD, MI 49349
P.O. BOX 35 AREA CODE (231) 689-1701 FAX NO. (231) 689-096