

Danbury Township Board of Zoning Appeals

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The Danbury Township Board of Zoning Appeals Special Meeting was called to order at 5:04 p.m. by the Chair, Loretta Grentzer. The Pledge of Allegiance was recited.

The roll call showed the following members present: Chair, Loretta Grentzer, Vice-Chair, Lisa Bauer, Ms. Sherry Roberts, Mr. Clyde Shetler and Mr. Joseph Fetzer. Alternate, Mr. Gregory Huffman and Alternate, Ms. Patty Zsigo were excused. Also, present was Kathryn Dale, Zoning & Planning Administrator. Visitors present were John & Carolyn Slager, Dennis Rospert, Jim Switzer, Dale Knobel, Joseph Plevyak, William "Bill" Nicholson, Terry Ross, Matt Strecker, Andrew & Jennifer Gehrlein, John Feick, Josh Welfle, Tom Dearth, Michael Brown, Rich Kelmer, Richard Kinney & Herbert Kinney.

Ms. Dale read the rules of order for the meeting proceedings. The meeting is being held via Zoom due to the Covid-19 pandemic. Ms. Dale acknowledge everyone who joined the meeting and explained that prior to speaking, the Chair would call on everyone to give them the opportunity to speak. She asked that if they were not speaking to place themselves on mute so that any background noise was blocked. Ms. Dale explained that at the conclusion of the hearing during the Board's deliberation, the applicant and any members of the public would be placed in the "waiting room" of Zoom. She explained that they should not leave the meeting because the Board will come back and make their decision openly. The Chair asked Mrs. Dale if all the documents relating to the case had been received and were in proper order. She indicated that they were. The Chair swore-in the Zoning and Planning Administrator, Kathryn Dale.

The Chair asked Mrs. Dale to introduce the first case of the evening.

Adjudication Hearing
Case BZA #2022-007
425 Walnut
Slager

Request for an Area Variance from Section 5.5.8. to allow for a 6' high privacy fence along the south, side property line where 4' is the maximum height allowed.

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none. Mr. Fetzer moved, and Ms. Roberts seconded the motion to open the public hearing. All were in favor and the motion carried.

The Chair asked the Zoning Administrator to give an overview of this application. Ms. Dale stated the applicant is proposing install 46' of 6' high fencing. 36' will be along the east, rear property line, but the 10' along the south, side property line is only permitted to be 4' high. Upon inspection of the property December 1, 2021, the fence was being installed and was not included on the property owners zoning permit (#2021-163) issued 08/04/2021 for other improvements being made to the property. The fence was indicated on the house floor plans submitted for that permit, but not on a site plan where it should have been shown and the application also made no mention of it, so it was missed and overlooked. A warning letter was sent to the owners and their contractor 12/03/2021. The fence that was being installed was a different style fence than what is now being proposed and also would have required some other variances, but with the change in the style of the fence, those other issues have now been alleviated. Ms. Dale concluded by reviewing the decision criteria the Board would be considering during their deliberations.

The Chair asked if the Board Members had any questions for Ms. Dale. There were none.

Ms. Dale shared that the Contractor, Denny Rospert was on as were the Owners, John & Carolyn Slager. Ms. Dale asked who would be presenting and Mr. Slager indicated he would be.

John Slager, Owner/Applicant, 425 Walnut, Marblehead, Ohio was called upon and sworn in. Mr. Slager reviewed the paperwork and stated it was as they had submitted. The Chair asked if there were any additional documents that they wished to enter into the record. There were none. The Chair invited Mr. Slager to provide his testimony.

Mr. Slager said, just to review, the property was purchased by Carolyn's father as a family legacy 22 years ago and we did not have any idea at that time that there would be any zoning restrictions. We did have the fence on the prints that we submitted, and we now know that we needed a separate permit to extend that side fence to six feet. Basically, that's why we're here as Ms. Dale stated. So, in the pin diagram that is up on the screen right now, we do propose that the 4' section on the south side, be extended to 6', with those additional 2', having no more than 60% opaque on that side. So basically, it would be a lattice or the extending 2' on that side fence. That went to the Lakeside Review Board on January 8. That feature was approved for both the south and the east side by the Lakeside Review Board. So, we believe that this is the final step necessary to take that south fence to four feet so that it matches and is not out of proportion with the east side and it blends, and it looks uniform. As Ms. Dale mentioned, it's only a 10' section of an approximate 80' length of property to the street of Walnut. So, it is not the entire length of the yard, and the neighborhood character will not be phased or altered as a result. As Ms. Dale mentioned, it will not have any detrimental effect on governmental services because

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it's in the back of the lot not affecting anything in the front of the property. We wanted to use that corner space to place a hammock and we were hoping to acquire some degree of privacy from the neighbors to the south by having the fence at 6' rather than 4'. So that was our intention right from the very beginning and our vision for that fence. It does not impose on any of the residence space then a 4' fence would. It would still be 10' in length. As you all know, we're undergoing a major remodel of the project with contractor Zimmerman Construction. In preparation for the construction, we removed some trees with the permission of Lakeside and we're going to be replacing all of those trees with our landscaping plan. But until those trees mature, we just want to create a little bit of privacy in that back corner, for the patio and for the hammock that we wanted to put in, it will not obstruct the view to the neighbors to the south any more than it does today. We still view their apple tree as it sets. In fact, we enjoy their apple tree and all of the wildlife that enjoys the fruits. We will not be embarking on prohibiting visual to that. So, we just want to finally say thank you to the Board for this opportunity to present. We trust that the documents provided in the response to decision standards and drawings and photos presented today have enough information to approve our request. Yes, we could continue to live in the home with a 4' fence, but we wanted to create uniformity again to the back fence at 6' with the lattice 2' on the top so that it would look appropriate from the curb. We ask that the Board consider everything that we brought, and that you approve the variance request with a favorable decision. Thank you.

The Chair asked if the Board Members had any questions for Mr. Slager. There were none.

Ms. Dale asked Mr. Denny Rospert if there was anything more, he wished to add since he is the contractor for the project. He indicated that he did not.

The Chair asked if there was anyone with standing who wished to testify, or other correspondence received. Ms. Dale shared that in order to ensure the adjoining property owners had a chance to have a say in this hearing who may not have been able to participate in the Zoom format, she allowed written statements due to the health crises situation. She reported that no written correspondences from any adjoining neighbors was received, and Mr. Jim Switzer and Mr. Dale Knobel with Lakeside were on the Zoom meeting. She said there are some other people on the Zoom feed as well, but she believes that they were here for the next hearings on the agenda.

Jim Switzer, Director of Lakeside Historic Preservation, Design review and Municipal Projects, 236 Walnut, Lakeside, Ohio was called upon and sworn in. I wanted to say that Lakeside both Municipal Services Committee (MSC) of the board and Historical Preservation Design Review Board (HPD-RB) did in fact, approve it. MSC does not have the authority to approve the zoning portion and of course, we recognize your authority, but we do support the request today. I did want to point out too, generally it's challenging for Lakeside to approve fences in the first place, but this one is wood. So, the natural product was a plus. They missed one of the key points that we discussed with the approval of this. What you don't see is it blocks the church. There's a commercial building opposite that if you take that corner view, it diagonally goes straight to the church. So, it makes sense that they want to do this, and we support that. That's really my comments.

Ms. Dale said that Mr. Switzer submitted January 11, 2022, the MSC decision of the deviation and variance request after the Board received their packets and that will be entered into the record as Lakeside Ex. 1. which also includes the HPD-RB Certificate of Appropriateness (COA).

The Chair asked if the Board Members had any questions for anyone who testified. There were none.

Mr. Shetler made a motion to close the public comment segment of the hearing, seconded by Ms. Roberts. All were in favor and the motion carried.

Ms. Bauer motioned to recess into executive session to deliberate the merits of the case. Ms. Roberts seconded the motion, and the roll call vote was as follows Mr. Shetler – yes; Mr. Fetzer – yes Ms. Roberts – yes; Ms. Bauer – yes; Ms. Grentzer – yes. The motion carried and the Board recessed at 5:24p.m.

Ms. Roberts moved, and Ms. Bauer seconded the motion to reconvene. The roll call vote was as follows: Mr. Shetler – yes; Mr. Fetzer – yes Ms. Roberts – yes; Ms. Bauer – yes; Ms. Grentzer – yes. The Board reconvened at 5:30p.m.

The Chair asked Ms. Dale to read the Findings of Fact for BZA Case #2022-007:

With regard to BZA-2022-007 a request for an Area Variance from Section 5.5.8. to allow for a 6' high privacy fence along the south, side property line where 4' is the maximum height allowed for the property located at 425 Walnut:

1. The property in question **will** yield a reasonable return and **can** be used beneficially without the variance because the property can be used for a single-family residence. They are also allowed to have fencing, just not this tall along the side property lines.

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2. The request **is not** substantial because the proposed 6' high fence will not run the entire length of the side yard.
3. The essential character of the neighborhood **would not** be substantially altered by the variance and adjoining properties **would not** suffer a substantial detriment as a result of the variance for the same reason aforementioned in #2 above.
4. There is **no** indication the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because all utilities are available to the property.
5. The property owner states they **were not** aware of the zoning restrictions at the time they purchased the property.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by reducing the height of the fence to 4' along the side property line.
7. The spirit and intent behind the zoning requirement **would be** observed and substantial justice done by granting the variance because there will still be ample, light, air and space between this fence and any neighboring structures and it is only for a 10' section at the corner of the property.

Mr. Shetler moved that the Board adopts and makes the findings of fact as read by the recording secretary and that after considering and weighing these factors, the Board finds that Decision Standards(s) (2) (3) (7) weigh more heavily to show that:

- a. Practical difficulty **is** sufficient to warrant granting the Variance requested.
- b. There **is** a preponderance of reliable, probative and substantial testimony; and
- c. There is evidence that **does** support the applicants request for a variance.

Therefore, the Variance should be accordingly **APPROVED**.

Motion Seconded by Mr. Fetzer. Roll Call Vote was as follows: Mr. Shetler – yes; Mr. Fetzer – yes; Ms. Roberts – yes; Ms. Bauer – yes; Ms. Grentzer – yes. Vote 5-0 the motion passed. The Chair stated that the application has been approved and the applicant can pick up permits following the Board's next meeting which is February 16, 2022.

Time 5:34p.m. Board paused because the next hearing was scheduled to begin at 5:45p.m.

Adjudication Hearing Case BZA #2022-001 351 Cedar Nicholson

Request for an Area Variance from Section 7.12.C to allow more than 75% of a nonconforming structures floor area to be structurally altered and restored (100% proposed).

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none. Mr. Shetler moved, and Ms. Roberts seconded the motion to open the public hearing. All were in favor and the motion carried.

The Chair asked the Zoning Administrator to give an overview of this application. Ms. Dale stated the applicant is requesting to voluntarily demolish, remove or structurally alter more than 75% of the floor area of a nonconforming structure and restore & rebuild the single-family home in its same location on this property.

On April 21, 2021, the Board of Zoning Appeals heard an Area Variance request for this property on the following items:

- Section 3.5 to allow a porch addition to encroach into the west, front-yard setback (0' proposed/ 5' required), and the south, front-yard setback (0.5' proposed/5' required).
- Section 7.12.3.A to allow more square footage than permitted to be added onto a nonconforming structure [58.6% (990s.f.) proposed/ 20% (337.8s.f.) allowed].

These three variances were approved, and the final decision sheet signed May 19, 2021. On May 25, 2021, the applicants received Zoning Permit #2021-105 (**Refer to Twp. Ex. 2**). Ms. Dale showed that exhibit on her shared screen for everyone to view. Highlighted were the additions that were going to go on, on either side of the porch, they had an 18' x 26' two story addition on the back of the house, and then it also included an 8' x 12' deck on the upper part, the second story of that deck.

The drawings attached to that permit were the same drawings presented to the BZA and are dated 01.22.2021. The zoning permit is valid for 1-calendar year from the date it is issued. Construction did not begin until the Lakeside season reopened to contractors in the fall of 2021.

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According to the zoning inspection notes, inspections were conducted in Lakeside on September 29, 2021, and it was noted that site prep was starting at the property. Another inspection took place in Lakeside on October 27, 2021, and again notes that preliminary work had started and the markings identifying the addition location passed.

On December 1, 2021, the inspection of the property showed that the whole roof had been removed, which was not indicated on the plans with the permit, as well as other demolition and removal of parts of the house that were not shown on the plans. Ms. Dale showed the next exhibit on her shared screen for everyone to view. Specifically, (**Refer to Twp. Ex. 2, Sheet EX-1**), highlighted in red, there is reference to “*Remove Enclosed 2 Story Porch*” on the back of the house but the “Roof [was] to Remain”. According to the floor plans with the permit, this was the back 2nd story of the existing structure where Bedrooms 2 & 3 are identified. However, this whole back part of the house was removed, including the 1st floor. There was no reframing of the 1st floor exterior walls to be done according to the plans (**Refer to Twp. Ex. 2, Sheet A-1**), only patching of where windows had been. Ms. Dale again shared the specific drawing sheet on her screen. She continued and said, again, this is with the permit, this is what was presented at the time the permit was issued. Just to clarify for the Board Members, any line that is dotted indicates that it was supposed to be removed. Any line that is filled with gray indicates a new wall to be constructed. So, there was no indication on - well there was indication on the first-floor plan that where this back wall was, there was going to be a small section removed. This gray area was a patch where an old window was. This wall right here, just on the backside of the kitchen area is white, which means and hollow, which meant it was to remain. And then on the second floor, they had shown that, that wall would be all new construction, the far, the old exterior wall of the house to accommodate for the addition on the back.

Also, (**Refer to Twp. Ex. 2, Sheet A-2**) the second story room identified as ‘Study’, or ‘Bedroom 5’ on some of the plans, was a notation added that clearly noted that it was ‘to remain’. That, that bedroom on the front of the house, above the existing porch was to remain. However, the roof on this part was removed as well, and half the exterior walls were removed and rebuilt. Upon looking into the house, from the exterior, (**Refer to Twp. Ex. 1, 12.02.21 Photo’s A-D**); this was the condition the house was in when the Stop Work Order was issued. Upon looking into the house, from the exterior, through the various window and door openings, it was observed that the walls for ‘Bedroom 4’, which would have been the SW 2nd story corner of the house, had been removed and the original section of the 2nd floor was stripped and gutted. On the 1st floor of the house, it was clear that it too had been stripped and gutted and new framing, more than what was indicated on the plans, had been done.

At that point I completed my other inspections in Lakeside but reached out to Mr. Switzer and requested that he join me, if he was available, to look at this property with me. When we returned, we asked one of the crewmen to see the drawings they had on site. The drawings they were working off had the Ottawa County Building Department stamp of approval on them but were dated 08.10.21 and not the same plans that were issued with the Zoning Permit in May. Mr. Switzer and I then returned to his office and attempted to contact the contractor and architect.

A Zoning Stop Work Order (SWO) (**Refer to Twp. Ex. 1, 12.02.21 Photo’s A-D**) was prepared and sent December 2, 2021, at 10:49a.m. via email to the homeowner, contractor and architect which included the photo’s date stamped 12.02.21. The zoning permit that was issued in May was also included in the SWO. As the SWO letter indicates, at the request of Mr. Switzer, I agreed to allow them to complete the roof construction and to shingle it to protect the integrity of the work that had already occurred in the structure, as opposed to leaving it open and exposed to the elements until this Board’s hearing date (7 weeks/over 45 days^{+/-}). We learned on December 1st when talking with the crewman, that the roof trusses were expected to be delivered the next day (December 2nd) and that all the original hardwood floors in the original structure had been preserved. They were given until December 23, 2021, to complete the roof, but it was specifically ordered that all other interior work had to cease immediately.

After receiving this variance application, I went back to the property on December 7, 2021, and took photographs of the interior of the structure (**Refer to Twp. Ex. 3, Photo’s A-N**) to be able to show what work has taken place within the original portion of the house. At that time, it was discovered that the 2nd floor framing in the original section of the 2nd floor had been roughed-in, despite the SWO, but apparently that work was finished the same day as the SWO due to the roof going on. Ms. Dale shared on her screen photos G& H of the interior walls that had been roughed in. The day that Mr. Switzer and I were there, comparing back to the 12.02.21 photos, if you look closely in some of them, it appears that there was very limited framing on that second floor, looking through those windows. But a lot of that had been completed by the next day. I was told that it was completed due to the roof structure going on.

All framing that has taken place in the house that was not initially shown are highlighted with red lines on the drawings the contractor was working off at the job site (**Refer to Applicant’s Ex. 1**). These are the plans that the applicant submitted with this BZA application. They are dated August 10, 2021,

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which is what the contractor showed us they were working off of, which is later than when the permit was issued. Anything that's in red, is new framing that has taken place that was not shown on the original plans, and frankly, they're not shown on this drawing either. This is a this is a hollow wall. Okay, these red lines, I've added you can see I can remove them; it was a hollow wall. Okay. So that was some additional work that took place that are not even shown on these drawings that the contractor was working off of.

They submitted 2; A-1 sheets. The one sheet dated 01.22.21 was submitted with the BZA application that has some bubbles on it that the architect submitted and is noted as a revision, where additional work took place that was not originally shown on the original permit. But you can see that on this particular sheet on the first floor, this wall next to the refrigerator, was shown as gray and being a new wall is actually moved up a little more than where it was indicated on the plans. The whole back first story of the house was removed and rebuilt. So, there's some additional work that's not indicated as a revision and that's shown in the red.

On the second floor, the architect indicated that these walls, in the bubble, would now be removed and rebuilt. But this wall here, at the end of the storage closet, is not included in the bubble. That is an additional wall that's been removed and rebuilt. There were some windows that were between Bedroom 5 & Bedroom 4, which I believe have been patched in. They have plywood up at least at this point. So those would have been patch areas that were not included on the plans. The point of some of this and these red lines is just to show the Board that there's still some additional work that has taken place that that is not indicated on the plans. Also, on the sheets that were submitted by the applicant, these again are the August 10 drawings, if you look at the legend, it says *"Patch All Finishes To Match Existing"*. This would lead me to believe that the house was not supposed to be fully gutted. If you are patching a space to match the existing, there should be a wall finish there that you're matching to. Unfortunately, the exterior walls of the house on both levels have been taken down to the studs, so there is nothing existing to match, other than to match some framing. That you can see in some of these photos of the first floor, I'm looking specifically now at Twp. Ex. 3, these are the 12.07.21 photos, Photo B. Ms. Dale pointing on her shared screen of the photo stated, these would have been the two windows from the first floor looking out onto the porch. I'm not sure if windows are supposed to go back in there but they're boarded up. And then you can see that everything on this first floor is down to the studs. Just kind of going through some of these photos. These again, they're identified at the top of the page whether they're on the first floor or the second floor, but they are giving you an indication of what the interior of the house looks like, in its current condition. These photos, starting at Photo G are on the second floor. As you can see there's a lot of new framing. This is inside of that 'Bedroom 5' or 'Study', which is the room; this is Photo K and it's above the front porch. You can see where the existing wall was, but anything above that was removed and has been rebuilt. And you can see that from the exterior, which is an exterior photo identified as Letter M. You can see where the backerboard here, that's all-new construction above that.

In the Board's packets, some additional facts include that the property is a corner lot and has two front-yard setback requirements. The original house is nonconforming because it sits 1.8' from the south (4th Street), front property line where 5' is required and has a 0' setback on the west (Cedar), front-yard. The overhangs on the porch on the west side also encroach into the road right-of-way by 1.4' (18").

Section 7.12.3.C of the zoning resolution states the following:

Section 7.12.3.C. Modifications to Nonconforming Uses:

- C. *A nonconforming use or structure which has been damaged by fire, explosion, act of God, or the public enemy or demolished, removed, or structurally altered voluntarily, to the extent of seventy-five (75) percent or more of the floor area contained in the building or structure at the time of damage shall not be restored, rebuilt or enlarged except in conformity with the regulations of the district in which it is located.*

Floor Area is defined as:

Section 2.2 Definition of Floor Area:

The sum of the gross horizontal area of all floors of a building, measured as a square footage, from the exterior faces of exterior walls or from the center line of party or common walls separating two buildings. Floor area shall include:

1. *The area of attics when finished and habitable for residential, commercial, or industrial purposes with a valid certificate of occupancy; and*
2. *Elevator shafts, stair wells, and closets on each floor; and*
3. *Any covered, roofed-over space such as a garage or carport for off-street parking attached to the principal structure, including roofed enclosed or*

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unenclosed porches, breezeways, patios, decks, interior balconies, and mezzanines.

The following shall be excluded when calculating floor area:

- 1. Attic space providing structural head room of less than 7 feet; and*
- 2. Basements or cellars*
- 3. Open, uncovered steps, terraces, patios, decks, balconies and porches; and*
- 4. Any portion of the building that would otherwise be included in the floor area but encroaches over a property line onto an adjacent parcel or road right-of-way.*

The purpose of nonconformities is outlined in Section 7.12.1:

- (1) Define the legal status of buildings or land uses which do not conform to this Resolution but which were in operation prior to the enactment of this Resolution (essentially protecting something that was previously and legally existing), and*
- (2) To provide either for the conversion of nonconforming uses into conforming uses as soon as reasonably possible or for their eventual and equitable elimination.*

The applicant is requesting to voluntarily demolish, remove or structurally alter more than 75% of the floor area of a nonconforming structure and restore & rebuild the single-family home in its same location on this property without conforming with the "L" Lakeside district requirements. The original 2-story house with the porch was 1,689s.f. They were required to preserve 422.25s.f. of the house, which would have been accomplished if the 1st floor living room, dining, and 2nd floor study/bedroom 5, bedroom 4 and family room had not been completely gutted. In addition, the whole roof was removed, and more was removed, from the original back of the house than what was indicated on the plans.

If the plans submitted with the permit and to the BZA back in April had properly shown the work that has, or was intended to, take place this would have been discussed then or at the very least, if revisions had been submitted once it was determined what needed to happen once on the job site, then this should have and could have been addressed sooner. To a degree, we are in this position as a result of the applicant's own actions of submitting different drawings than what was approved by Zoning to the County Building Department. But also, nowhere on any of the plans does it indicate that the existing portion of the house was supposed to be completely remodeled and gutted.

The Board must consider if the proper, factual drawings had been presented, before the demo and reconstruction occurred, would the variance have been granted? If the Board denies this request, then there would be no other option but to move the whole house into compliance with the underlying zoning requirements and setbacks. All variances granted in April 2021 are essentially on hold for the time-being and will become null-in-void if a variance is not also granted to Section 7.12.3.C. that they are requesting now. If the Board approves the request, then work would be able to be continued once new, proper drawings and zoning permit is issued with the house sitting on the property right where it is today.

Ms. Dale concluded by reviewing the decision criteria the Board would be considering during their deliberations. Ms. Dale said she was happy to try to answer any questions the Board may have of her and explained how the meeting would be conducted moving forward, calling upon the applicant and their representatives to speak. She said she would assist the Chairman, Ms. Grentzer, to call then upon others who are present on the Zoom feed, since she is not able to see everyone on, to give them the opportunity to also speak.

The Chair asked if the Board Members had any questions for Ms. Dale. Ms. Roberts indicated that she had a question. Ms. Roberts said, I'm looking at the staff report and the request. What you're saying is, to allow more than 75% of a nonconforming structure - and what they're asking for is 100% proposed, is that correct? Ms. Dale said correct. Ms. Roberts asked if it is more than 100%? If their drawings are showing that there's things that are not on their submission, then we're really at more than what's there? Ms. Dale said first, you have to go back to the definition of square footage. So yes, there is more that has been done than what is shown on these plans, but the same amount of square footage is affected by this. Ms. Roberts said it is what is it. Ms. Dale continued, it's just that, you know, no matter what happens with the decision tonight - if it gets approved, these drawings are going to have to be updated again to show everything that's being done, which these plans at this point do not. If the application is denied, then there's a lot of other things that will likely have to be taken into consideration. The applicant, of course has the option to appeal your decision to the Court of Common Pleas. They could also decide not to go that route and then at that point, zoning would expect to see that the house would be moved on the property to be more compliant with the setbacks. They are likely going to have to come back to us for some setback variances for the overhangs of the roof. If they are denied, either way, all this work has already started in the house, so we are still going to need, at some point, drawings

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that show all of the work that has taken place. Ms. Roberts asked, even if we approve what they're asking for, wouldn't they have to reapply for what they haven't put on their drawing to come back and finish the project? Ms. Dale said yes, they would. The permit that we issued previously, would have to be updated to show what is taking place. Ms. Roberts clarified they still have to come back for another. So even if they have the permit in hand for this, it's still not enough to complete their project, right? Ms. Dale said right, they just submit revised drawings. If you guys approve this request to exceed the 75%, to modify more than 75% of the square footage of the structure, they are going to have to submit more current drawings than the August drawings to show all of the work that's been - that's going to be done or has been done, which means we update the permit from April. Ms. Roberts said okay, thank you.

Ms. Grentzer said she had a question, for Ms. Dale and this is just a point of clarification. What I gather, there were two sets of drawings. One that was submitted to you, and one to the construction. Is that correct? Ms. Dale said yes. So, the permit drawings that were submitted to us, the permit was issued back on May 25, 2021. Those drawings submitted with the permit, and this is the survey plan, but these were the plans by the architect. Those are dated January 22, 2021. Alright, that's what was attached with the permit. Okay, that's Twp. Ex. 2. And then the drawings that the contractor had, are the drawings that they submitted, which is identified as Applicant's Ex. 1. And those drawings are dated August 10, 2021. Ms. Grentzer said, And different. Ms. Dale replied, yes, so those drawings, just kind of looking - I know, you can't see all the fine detail here, but let's kind of whip through those in the permit drawing. We had the site plan. We had the first floor existing and second floor existing. We had the existing house elevations; we had the proposed second floor addition shown. We had the proposed first floor addition shown as well as the porch additions, shown, okay. And then these were the side elevation drawings. The drawings that were submitted with this application for the appeal, and that the contractor had, included the site plan including a foundation plan, including the first floor and second floor addition and identified the walls that were to be removed and rebuilt. Then they included the elevation drawings. They included an electrical plan. I think this is the biggest thing, they included a framing plan for the entire roof which was not included with the zoning permit application at all. So, there were some additional drawings that were produced after the zoning permit was issued that the contractor was working off of. Ms. Grentzer said okay, thank you. Any other questions? Then we'll go on.

Ms. Dale suggested for ease of conversation, that Mr. Terry Ross, Architect, Mr. Matt Strecker, Contractor and Mr. William Nicholson, Owner all be sworn in at the same time before they begin. This will allow each of them to be able to freely speak without having to stop and swear each one in when they are ready to speak.

Terry Ross, Architect/Agent, 1127 Sheltered Brook Drive, Huron, Ohio was called upon and sworn in.

Matt Strecker, Strecker Remodeling and Construction, Contractor/Agent, 11911 Thomas Road, Monroeville, Ohio was called upon and sworn in.

William "Bill" Nicholson, Owner/Applicant, 4511 Wild Pine Court S., Midland, Michigan and 351 Cedar, Marblehead, Ohio was called upon and sworn in.

Ms. Dale said that Mr. Nicholson is on Mr. Joseph Plevyak's Zoom feed and sitting with Mr. Plevyak. She asked Mr. Plevyak if he would also be speaking or if he was just assisting Mr. Nicholson with the Zoom. Mr. Plevyak stated he was just assisting Mr. Nicholson.

Mr. Ross reviewed the paperwork and stated it was as they had submitted. The Chair asked if there were any additional documents that they wished to enter into the record. There was none. The Chair invited Mr. Ross or whomever was going to speak first to provide their testimony.

Mr. Ross said I think to digest this, we're talking about four issues. The 1st issue is the date of 2 sets of drawings. The 2nd being more interior walls demolished than the construction drawings show. The 3rd issue is removing the roof over the existing cottage, the 28' x 24' section. And then the 4th issue being the roof removed over 'Bedroom 5'. So, if I could start with the date of two sets of drawings.

The 1st set of drawings were prepared as preliminary drawings that were submitted to Lakeside Design Review for approval. Once those drawings were approved, they went to BZA for the variance requests, which was granted by the way, the variance request. The difference between that set of drawings and the construction drawings, dated 08.10.21, is that the 08.10.21 drawings are construction drawings for building permit. There's absolutely no change of design concept, intent for building elevations, square footage, or structure, other than adding additional information such as electrical drawings, foundation drawings, wall sections, electrical and so on, as required for a full set of construction drawings. Reason being is that if BZA had rejected the zoning variance requests, there is no need for me to do complete set of construction drawings if they weren't going to get approved. So that's the difference in the two sets of drawings. There's absolutely no change in design concept, square footage or appearance of the structure. The 2nd issue would be additional removal of interior walls. I can justify part of this, and I think Mr. Strecker will have to take on the second part. If we talk about the specific way the second floor, looking at an area such as 'Bedroom 4', those existing walls were

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made of, as some of the cottages are in Lakeside, 1" thick walls made of beadboard. It was decided on-site to remove and replace that particular wall in the exact location with a 2 x 4 wall that could appropriately accommodate electric. The same with some bathroom and in kitchen area locations, that the new walls in the existing location would accommodate the electric and plumbing. Additional walls were removed and replaced to support the existing stairway which is in the exact same position. The stairway exists and the structure underneath was unstable, so those 1" thick walls were removed and replaced with 2 x 4 walls to properly support the second floor. The wall, Ms. Dale was talking about, the south wall of the existing cottage, I wasn't aware that it was removed and replaced. Mr. Strecker would have to talk about this. I imagined it was for structural stability. Once you get into 100-year-old buildings, and so on, I do believe it was a structural issue because no walls are going to be removed unless it was necessary. But I can't speak to that. The additional walls on the first floor that were removed are as shown. So, it appeared, yeah, it appears that 100% of the walls were taken out. Those that were replaced that were not noted to be replaced, what can I say, I'm guilty, I need to revise the drawings and show that those walls were removed and replaced in the same position.

Mr. Strecker asked if he could jump in. Mr. Ross said absolutely. Mr. Strecker said, just so I'm there following your train of thought with the walls and what we came in line with. Our intent was not to demo the interior finishes. A lot of it was to sort of just add-on to the interior finishes of the walls. But what happened was that the floor had a major deflection in the middle of the floor. So, we thought okay, well, the beams got to come up. As we started the pull, underneath, under the additional first floor in the crawlspace, or jacking up the floor, what we're noticing is, is the second-floor joists are not moving the $\frac{3}{4}$ " thick walls that are surrounding the stairwell, are not pulling up the walls. Nothing is moving like it should. So, as we started to take apart, which was a fiber board with slats on the ceiling, we're noticing, one, the floor system on the second floor does not have any structural hangers or correct beam support to even support this. Nothing that you would have been able to see during the design. So, our thinking is, well, I know a building inspector is going to come in and say "Listen, this ain't gonna fly, you're putting additional weight on the second floor of the existing house, this house is not ready to go". So, as we disassembled the first-floor walls, then we're noticing, okay, well, we've got some rot damage here to this corner to here. And then when we got to the end that faces the new addition, which would be sort of the new kitchen area; as we opened up the floor because it wasn't moving up, we noticed that the floor joists are 2 x 6 on 3' centers over that area. Complete one-span with no structural support. So, it was one of those; It was another step of saying listen, I can't get a building department to approve what I'm dealing with. I have to get the house structurally sound. So, as we're demoing things, that's why those walls were having to be added. It was the same thing upstairs. Those walls are not structurally supported to hold up the roof, even the existing one that was there, which had major deflection and rot. So, a lot of the things that were happening wasn't because "let's just rip this out and put new ones in". As we were trying to fix the first-floor floor joists, we're pushing up everything above them that was supporting and around it, was not structurally; it would not have passed code. So, and I did talk to Ms. Dale about this, we had a long conversation. I said, you know, my thinking is, and I was not real familiar with the 75% and I'm thinking well, I got to do what I need to do to get past the code. It would have been helpful, like she had mentioned to say, "Listen, if you're demoing anymore on this existing part because of the variance needed, you know, come to us". We did have that conversation happen. And I said, "Yeah, that's great. Any more training on our end is great". But a lot of the reason why the walls were the way they were was because of, starting from that first floor and working up and saying that these things are not structurally sound. You'll see, and the pictures that were in there, of the beam that had to go down to the middle, the additional hanger support systems and the additional walls, everything can be justified. You'll see the additional beam that's there in the middle of the floor joists, there was one 2 x 8 that was three individual pieces that was really nothing more than just filler. So again, intent was not to tear down the entire ceiling, it was, it was just necessary. It was nothing that we've seen in the original layout either, in the house. Ms. Dale asked Mr. Strecker to look at what she was sharing on the screen. She said she had Twp. Ex. 3, these were the 12.07.21 photos, photo's A & B taken from the interior. She moved her cursor over the beam in the ceiling and asked if this was the beam that he was talking about? Mr. Strecker responded that yes it was. Ms. Dale said okay, I guess it's kind of nice to be able to have these photos so people can visualize what you're talking about. Mr. Strecker said absolutely, I appreciate that. Ms. Dale said yeah, I just want to make sure we're on the same page here. That's all. Okay, go ahead. Continue.

Mr. Ross said that was that was an excellent explanation because there's more that happened structurally, that I wasn't aware of. That's the key, once you get into these, we're removing and replacing, as I mean, in the same location. So, I'm guilty of not notifying the proper authorities that, that was going on. That's going to be corrected in the future when we run into these conditions. But I think all in all, it's exactly the same floor plan as proposed, but with some of the walls being a little bit thicker than they were before. I think that explains that portion. The next section would be maybe the roof over 'Bedroom 5'. Yes, the drawing said, "*Second Floor to Remain*". During construction and so

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on, you see that the windows were removed and once the windows were removed, because you see the blue siding down below the green zip wall; the remaining window areas were rotted, the roof was rotted, and primarily that roof and the next roof that we're going to talk about over the existing cottage was not structurally sound. It's a four-square structure that was framed out of 2 x 4's and 24" on center. So, in the design process, between the contractor and I, we thought a good solution to this entire roof system would be to use an insulated roof panel, which are called SIPs, structural insulated panels. We begged suppliers for information on those panels. When we finally received information, they did not propose what we were thinking. It was too late by then, so now we have to inherit an existing structural system that's not sound, we can't insulate it, so what do we do? With 2 x 4's you can't get insulation in there that would meet code and would meet snow load and energy code. So, the wall section that's on drawing S-1 indicates new ceiling joists and so on. That wall section I don't believe was presented with the first set of drawings that went through zoning. That is my error for not getting - well when the roof was removed because not structurally sound, that should have alarmed me at that point that I better notify somebody. So anyhow, end result is the roof profile, the exterior and the interior is exactly the same profile as proposed and approved by BZA for the zoning variances. That's all I have.

Ms. Dale asked Mr. Nicholson, if there was anything that he wanted to add as an owner. **Mr. Nicholson** said, no, I have the utmost confidence in Mr. Strecker and in Mr. Ross. The footprint that we have now is the exact same footprint that was approved for the zoning back in April. So, the footprint has not changed at all.

Mr. Strecker said, to give the Board our end of it, Mr. Ross and I did exhaust ourselves. I don't know if COVID had an impact with SIP panel builders, supplies and materials. But our intent was to go over the existing roof with the SIP panel, a structural SIP panel, so that way we could clear span that and tried to get that. It was exhausting trying to get two different suppliers, just one to even respond to give us the answer if they would be willing to look at the design, they said they would, and then they both came back and said, "Listen, we can't build what you need in order to cover that span". At that point, you know, I'm trying to think of ways to integrate, to build up the interior to not have to do that. And it just, there was no structural idea that I could come up with. And I've been doing structural framing for almost 30 years. It was just to the point of saying, "Listen, the only thing we can generally do is build it exactly like the new addition on the backside that is being built and build it exactly like it is now so there's no pitch difference." There's really no, there's no difference you would notice, other than it had to come off and be rebuilt. And now it actually meets building codes. It wasn't a decision, because it was just something that was taking more time and more for us - it wasn't something we intended to do. It was just the circumstances of suppliers and that option not working for us.

Mr. Ross said, I also had a lengthy conversation in Ms. Dale's office so as not to have, to avoid this situation from happening again. So, blame Mr. Strecker and myself, we know what to do next time. We apologize for not notifying the proper people, but we have to keep the job going and the roof was allowed to continue to be framed as proposed. And we need to know where to go from here.

The Chair asked if the Board Members had any questions. Ms. Roberts indicated she did. She said, I'm amazed between two professionals, between an architect and you, Mr. Strecker, that you didn't know what you didn't know, before you really got into the project. You knew a lot less than you did know, otherwise we wouldn't be in this position today. **Mr. Strecker** said duly noted. Unfortunately, with remodeling, a lot of it you do not see until you open up the area. As we're bidding, we don't go into homes and tend to open up ceilings and that, and your point is well taken. I understand the point of view on that. But I'm just trying to give you some perspective on our end and some of the things, the challenges that we deal with on a remodeling that are unknown until we do open it up.

Mr. Shetler said he had a question for Mr. Nicholson. Mr. Nicholson, can you kind of give us, I'll say a timeline of you know, you wanted to remodel, you contacted...Can you walk us through how you went, what you did, who was responsible for what and what your expectation was?

Mr. Nicholson responded, okay. I'd say we contacted Mr. Ross and it was about a year ago. We contacted him I think it was in December of 2020. So, it was over a year ago we contacted him. He looked at it. We talked over what we wanted to do which, what the footprint looks like now and what the cottage was like now. Then he got Mr. Strecker involved. Then we worked with Mr. Strecker and Mr. Ross. We then had to go through the Lakeside Historical Review Committee. We had to go through the Lakeside Municipal authority, both of them agreed, then we went to the zoning. And that's when that was approved last, I guess it was April. We wanted to get this; We started early because we wanted to get it done before the season starts in June of 2022. So that was the timing. Is that what, Terry and Matt, do you have any other comments on that? **Mr. Ross** said he think that's exactly right.

Mr. Shetler said he had a couple more questions that kind of piggyback on that. At some point were you provided a budget for the work before you applied for the permit? **Mr. Nicholson** asked to repeat the question. Mr. Shetler said, the question is at some point during this process, were you supplied a budget or a cost to perform the work prior to asking for a zoning permit? Mr. Nicholson said, I don't think that was part of the zoning requirement, was it? Mr. Shetler said he's not asking if it was a zoning

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requirement, he's asking if he was provided one. Mr. Nicholson said, Yeah, Matt, why don't you answer that? **Mr. Strecker** said, yeah, we've had preliminary budget discussions on the scale of the project. Mr. Shetler said, and part of that would have included an inspection of the home, I would assume. Mr. Strecker said, yes sir. Mr. Shetler said, Okay. Piggybacking upon that, if you have any discussions about who would be responsible for permits, and so on during the process, Mr. Nicholson? **Mr. Nicholson** said, we, Terry Ross and Matt Strecker were involved. Well, in the beginning we had worked with Lakeside Historical Review, and then we talked to Jim Switzer with Lakeside Municipal, and he reviewed it. And then after that, then we worked with Matt and Terry, about the zoning and Ms. Dale, of course.

Mr. Fetzer said, Mr. Nicholson, I've had a couple of questions, please. Who is responsible for approving any change orders on this project? **Mr. Nicholson** responded, Let's see, what we did was, you know, we got the zoning approved for the footprint and remodeling of the cottage. Mr. Strecker was the one that would look and make a decision on whether the existing structure was sound enough, or if there had to be some modification, like strengthening the walls. And then, of course, the roof, I guess the roof wasn't up to code either, according to Matt, so that was, you know, as we talked to Matt, he brought us up to date on okay, this, like, when they put the foundation in, they saw that the south end had some rotting in it, in the foundation. So, you know, Matt would update us on, you know, when he discovered as he tried to remodel it. Is that correct, Matt? **Mr. Strecker** said yes, that's correct. Yeah. And it was Connie [Mrs. Nicholson], that was primarily who was dealing with all the discussions on anything additional beyond what the scope of the drawing was showing. Mr. Fetzer clarified, So Mrs. Nicholson would approve any change orders? Mr. Strecker said, correct. **Mr. Nicholson** said, yes, we, we have the utmost confidence and Matt Strecker, and if he said, something was unstable, that it needed to be replaced, we said go ahead. Mr. Fetzer asked, so she, she approved the removal of the roof, and the other areas of the house that were indicated on the plans as being "remaining"? Mr. Nicholson responded, if Matt told us something had to be done, we said, "Sure, go ahead and do it". Because we wanted; The whole idea was that we wanted the cottage to be the way it was, but we were going to add on the back of it. But when you have these Lakeside cottages, you know, that are over 100 years old that were not built that well, sometimes you come up with surprises. And that's what happened with this house.

Mr. Fetzer said his only other question for you, Mr. Nicholson was, was it always the intention from the beginning of your discussions with the architect to gut the house and remove all of the plumbing, electrical services and the heating/air conditioning units? **Mr. Nicholson** said, okay, first of all, it's the summer cottage, there was no heat. There was no air conditioning. The electricity was very, very old, knob & wire electrical. The plumbing, the toilets were terrible. The plumbing was just, you know, it was barely livable to be honest with you. So, whatever it takes to, to fix it up, fix it up. As Mr. Ross pointed out, when this is done, it's going to be the same. Like when we talked about the two windows in the front, my wife is having the old windows redone down in Columbus and reinserted exactly where they were. So those boarded up windows is going to be brought, the remodeled window is going to be brought back in and put in. So, the cottage looks just like it did originally. Okay. This is an old cottage; it was barely livable. So, you know, it had the minimal electrical, and plumbing. I mean, it needed major rework. That's why we; you can't, you can't really live in it, basically. That's my viewpoint. Mr. Fetzer said, so from the beginning, you realize that you were going to have to remove the plumbing, the electrical, and I'll say heating and air conditioning to add that. Mr. Nicholson interrupted and said there was no updating of heating and air conditioning because there was no air conditioning. Mr. Fetzer finished, correct. You were going to include that or add that to the house. Mr. Nicholson said yes. And add heating and add air conditioning. Mr. Fetzer said sure, okay, thank you.

Mr. Fetzer said he had one question for Mr. Ross. On the drawings that you submitted with this application, and the drawings that were submitted, for the zoning permit, you refer to areas of the house that were to remain, what did you mean by remain? **Mr. Ross** said, I had hoped that we could have saved the original roof, I think the only area that I see that I marked as "to remain" is the walls and the roof over the second floor, 'Bedroom 5'. That's the only thing I see on my drawing that says, "*Existing Second Story to Remain*". Which, virtually it is remaining, the roof is going back on exactly where it was with new windows. Mr. Fetzer asked, so by "remain" you meant "replace"? Mr. Ross responded, ultimately, if I knew what I knew now, it would say replace. Mr. Fetzer said oh, okay, thank you very much.

Ms. Roberts said, if I may ask another question to Mr. Ross. You said you had hoped to retain the roof. It sounds like with what you just said that you had some questions that it will not be salvageable at the time. **Mr. Ross** responded, well, again, we tried to use that roof insulated panel. And structurally we found out months later, after we got information from the supplier, it would not work. It would not meet snow and wind loads, and insulation loads. So, at the point of submitting drawings, originally for zoning, I did not know that, no. Ms. Roberts commented, well, that's not what you said. I mean, what you just said was you found out after the fact, but what you said prior to that is that you had hoped to

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retain the roof. Did you hope to retain it, or were you hoping to figure it out later? I'm not sure what you meant by 'we had hoped to retain the roof'. Mr. Ross replied, the roof profile stays the same. We had hoped to use the existing framing system. You can actually get laminated 2 x 4's. Mr. Strecker & I had intended to support and reinforce existing roof, but that didn't work either with these insulated roof panels, so we just abandon that idea, and the roof came off and is framed in 2 x 10's.

Ms. Roberts said she had one more question for Mr. Nicholson. It sounds like you entered into a contract that was a moving target, that you were willing to set up an amount of money for your project, but that you were willing just to do whatever you needed to do after the fact. In other words, money did not seem to be your button. It was just whatever needed to be done. They could add on after the fact. **Mr. Nicholson** said the goal when we talked to the zoning board back in April was to maintain the cottage and add on to it. That was the goal. Okay. So, whatever it took to, to keep the existing cottage and add on to it is what our goal was because it's a family cottage. It's been in the family since 1977. And the zoning board said "Sure. Go ahead and keep the cottage the way it is". So did the Lakeside Historical Society, so did the Lakeside Municipal. And so, the goal was to keep the cottage and add on to the back of it. **Mr. Ross** said, I think Matt left the meeting, but I can speak on his behalf. He and I do several projects. All of his clients, our client, work on an educated budget estimate to start the job, and then it's a time and material project at that point, which by the way, my professional services end when construction drawings are approved for permit. I do not make inspections. And truthfully, I didn't know that the roof was removed. But nonetheless, I'll take care of that. But on a design build, if Mr. Strecker says 'Yes, I'm familiar with this type of construction, and usually these jobs end up costing \$5,000'; That's not a guarantee. When you get into rotted foundations, deteriorated beams and so on, it goes up from there. Mr. Strecker keeps meticulous records, any changes are documented, all material bills and labor bills are submitted. I don't know if weekly or monthly, but that's the process that we work on, is designed to build, and it works out. But people are putting in pretty serious money in these places. And they know upfront that it's going to cost \$400,000 or \$500,000 to either renovate, add, repair these cottages. But you know, we get caught in positions where you don't know what you don't know, during construction. We can't really dig up the foundation to do investigative work ahead of time and destroy somebody's property. So, these are tough, new construction is much, much easier.

Ms. Grentzer asked if there were any more questions. Mr. Shetler said, yeah, I've got a couple of more. I guess Mr. Ross's is the architect of record, correct? Mr. Ross said yes. Mr. Shetler said, so that would mean in my terminology, you're the engineer of record, correct? **Mr. Ross** responded, if it really involves structural engineering, there's sometimes, well, in this case, there's no structural engineer that was involved in it. So, if there's structural issues, it's under my stamp, registration stamp, yes. Mr. Shetler said, okay, but yet Mr. Strecker testified that he replaced walls and stuff based on his decision. Did he consult you on those structural replacements? Mr. Ross said he did not. Those are handled usually by lumber companies, and their design engineers provide free service for laminated beams, truss design, and so on, which I'm sure he has those drawings, but I have not seen them. Mr. Shetler asked, so Mr. Strecker, do you have the drawings for the structural changes you made? Mr. Ross said, I'm not sure that he's here. Mr. Shetler said he's on here. **Mr. Strecker** asked, in regards to the wall? Mr. Shetler said yeah, you testified you made structural changes, in my thought process are architectural or engineering changes. Mr. Ross just testified that you would have obtained some type of engineering documents from a lumber company, so I'm asking did you do that? Mr. Strecker responded that would be if we were to use some type of structural truss or floor system and in this case, what was done, is to have structural drawing done for something that I was very familiar with, with point loads on each end. I've dealt with these issues before and including once we get the building; once the building department comes through, they will do a framing inspection as well. So, they'll go over every detail with me to see what we have done to ensure that it is up to code. Mr. Shetler said, I think you've kind of answered my question. I guess I'm questioning if you're building walls and stuff to support the roof and other floors, I would consider that a structural design. **Mr. Ross** said, well, the residential building code has structural tables, guide tables for floor joists, roof joists, trusses, rafters, and you just select a span and the floor loading, 40 pounds or 50 pounds, size, you pick out your size. Yeah, it's routine.

Mr. Shetler said he had one last question for Mr. Nicholson. Who in layman's terms is driving the bus on this job? Who's ultimately in charge of all the decisions? **Mr. Nicholson** said, I would say it was my wife. But she has the utmost confidence in Matt Strecker who's remodeled some houses at Lakeside. And we have the utmost confidence in him. So, if he tells us that the wall is not strong enough to support the new roof, then we believe Matt because Matt has a lot of experience and he's done some fabulous jobs at Lakeside.

Ms. Grentzer said she had a question for Mr. Strecker and Mr. Ross, I am presuming from what was just said, Mr. Strecker, that you have quite a bit of experience in remodeling or refurbishing the homes in Lakeside. With that, were you not able to ascertain that there was going to be structural difficulties that you would encounter in this particular home, that there would be a lot of weaknesses, for example, because of age, etc. Were you're not able to ascertain that? **Mr. Strecker** responded that

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we were able to ascertain what we could gain access to. Along the existing foundation, a lot of the notes, why we were requiring additional foundation, we were able to, during the initial process, see that, okay, this is not structurally sound, we're seeing cracks in the foundation, these are going to need to be replaced. There was a fair amount of items in the house that complemented the drawings that we were able to say, 'Hey, these things are gonna need to be addressed'. It was not until we started to raise the center of the house that; see the inside had like a panel on the ceiling with a slat design and then they had like a foam board on the exterior walls, those things were not accessible, and they generally are not until we can start construction. It was not anything I expected to see when we removed the ceiling, to see the way the beam system was and the way the wall systems were. It does happen quite a bit in remodeling, to where we just have to, when we open it up and then we can look at what the live load is once we see the finishes down, that those things do change. And that is, it is a flowing chart, so to speak. We did gather quite a bit of information initially, but to a lot of the things that we just addressed that were issues, no, we were not able to see those things prior. Ms. Grentzer said, okay, thank you.

Mr. Fetzer said he had, what he thought were two short questions for Mr. Ross, just for some clarification. The first one, in order for the spaces, like the bedroom, kitchen, bathroom to be used in a similar way that they were prior, do those spaces need to be rebuilt? **Mr. Ross** said, well the kitchen was enlarged. You can see that the wall that separated the old porch that had a chimney in there and so on, that was removed, so those spaces became larger. The bathrooms? Well, the new bathroom on the first floor doesn't apply, but the second-floor bathroom was rearranged a bit to get the fixtures in there that the client wanted. Did that answer your question? Mr. Fetzer said, yeah, sure. Then based on the definition of floor area, was 25% of the house preserved? Mr. Ross responded, you know, that's a discussion I stopped into Ms. Dale's office, because I wanted to thoroughly understand from this point on, this 75% and so on. Her and I had a good discussion about, to me it would make more sense, if you were talking about lineal footage of walls to be removed or to remain by percentage, but I now have a thorough understanding. Let's say 'Bedroom 4' upstairs, another words that wall came out which affected the percentage, but it went right back in. So, did I violate the percentage? I don't think so. It stayed the same, with a different wall. Mr. Fetzer said, alright, thank you.

Mr. Shetler said he had one more. Mr. Strecker, who provided the building permit? Mr. Strecker said, we applied for the building permits with Ottawa County. Strecker Remodeling. Mr. Shetler said okay.

Ms. Grentzer asked if there were any other questions from the Board. There were none.

The Chair asked if there was anyone with standing who wished to testify, or other correspondence received. Ms. Dale shared that in order to ensure the adjoining property owners had a chance to have a say in this hearing who may not have been able to participate in the Zoom format, she allowed written statements due to the health crises situation. She reported that no written correspondences from any adjoining neighbors was received, and Mr. Jim Switzer and Mr. Dale Knobel with Lakeside were on the Zoom meeting. She said there are some other people on the Zoom feed, and she will go through each person to confirm if they wish to speak for this case or if they are on for the next case. Some she has already confirmed are on for the next case.

Ms. Dale called upon Mr. Michael Brown and asked if he wished to speak. Mr. Brown said no, he was only on to observe.

Dale Knobel was called upon. He stated his permanent address is 30617 Berry Creek Drive, Georgetown, Texas but his Lakeside address is 724 E. Sixth Street. Mr. Knobel was sworn in. **Mr. Knobel** stated, I, Chair of the Lakeside Historic Preservation and Design Review Board, which is charged by the Board of Directors of the Lakeside Association, with preserving the historical character, ambience, livability and general character of Lakeside, particularly helping Lakeside retain the built environment which keeps alive the historical roots of the Chautauqua. We pay particular attention to not just individual structures, and their materials, and style, but also the streetscapes, and to the relationship of one building to another and the massing of buildings, and again to the preservation of the character of Lakeside, most of which is a National Registered Historic District, registered with the National Park Service in the Department of Interior. We were particularly excited about this Nicholson project because it was designed to preserve a historic structure from the very earliest days of the 20th century. And to maintain it in a recognizable form. It will retain the appearance that it's had for a very long period of time, particularly on its front façade. It is in keeping with its neighbors. This is an important block that begins with Bradley Temple, one of the historic Chautauqua structures, and then has a succession of homes all built around the turn of the 20th century, very similar in character and very much uniform in their setback from the street. We were impressed that the Nicholson's wanted to repair and restore original features like the windows, use materials which are either currently on this structure or closely replicate historical materials of the structure. We thought it was a very fine design, we very much support the variance that would allow this structure to go forward. We would resist, or

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encourage you, to allow the structure to maintain its current orientation on the street. We believe that moving this structure would have a negative impact upon the historicity of this important block and Lakeside and its relationship to its neighbors would be irreparably harmed. So, we have learned lessons too, the HP-DRB, and that is we need to be more encouraging of exploratory demolition. Right now, we're not really very encouraging of that. Our Historic Preservation rules and regulations of Lakeside are currently undergoing revision. And there's some lessons that we can learn from this, and other projects, that could improve those rules and regulations that would improve the experience of Lakesider's and of the Danbury community as well. I've listened with great interest. I understand how this all occurred. We do appreciate the efforts of the architect, the builder and the owners themselves, to preserve historical fenestration and the roofline and the open porch and all of the character defining features of the property. I think that completes what I wanted to share.

Ms. Roberts asked if any correspondence was received from Mr. Knobel ahead of the hearing. Mr. Knobel said no. They issue a Certificate of Appropriateness (COA) which would go to the homeowner. It would also be registered with the with the Lakeside Association. We are immediately responsible to the Municipal Services Committee. So, we're a subcommittee of a subcommittee of a committee. Thank you.

Ms. Dale explained that Mr. Switzer, like he does for many Lakeside cases, submitted 01.11.2022 the MSC recommendation on the variance request and it will be entered into the record as Lakeside Ex. 1.

Jim Switzer, Director of Lakeside Historic Preservation, Design review and Municipal Projects, 236 Walnut, Lakeside, Ohio was called upon and sworn in. **Mr. Switzer** said, this is a challenging process. When you go into session, I realize that this discussion is going to be very heated. I respect the process and I hope that you do the same for the HP-DRB and Municipal Services. We've always recognized Danbury and your zoning authority. This cottage was built in 1920. So, it's been a nonconforming structure for 102 years in its present footprint, well before it knew it was a nonconforming structure. In Lakesides rules, we have a 50% demolition rule. It is only addressing the exterior. We do not take any consideration for the interior. I know your 75% rule has changed in the last three years. It's still, I hope a work-in-progress for all of us to understand. When the roof came off, we actually cited them as well for a violation of our 50% demolition rule. Required them to post online, that there's a demolition in-progress, going through our process. HP-DRB reviewed it and determined that this is a case where our future rules, where we will be adding investigative demolition would have paid-off in dividends. Having said that, your processes are most important as to how you follow them today, and what precedent we set with this and the next case. What I want to address are two cases in the recent past, one on 530 Cedar with Lewis-Lybarger. Similar situation where they exceeded 75% in the process, and also one on 416 Walnut with LePage. In both cases, and this is to me what's important to Lakeside and the streetscape, its heritage and character. In both cases, those houses were required to move from south to north, enough footage to make them conform. Neither of which had to move east to west or west to east to change its distance in streetscape from the street and its alignment to the neighboring houses. We did not come to you in full support of [those cases], in either case, we came to you and said, we leave this in your hands for you to decide as your authority. Today is a little bit different. In this case and the one following, is going to be looking at a change in the footprint, should this variance be denied. It would take it from the west to the east, in this case, 6.5' and in the other case, a little bit less. In both cases, it will take 100 plus years of heritage of streetscape view, the character and charm of Lakeside on those streets and the history that they represent, and alter them forever in history. We're asking, we're pleading we're begging, that we allow these homes to stay in the present footprint. This home specifically for this case, if it was to be moved, will change the photographs that have been taken for 120 years in this house, in this case. What I would ask is that we don't penalize the builders and I will give a great support to both the architect and builder who also did my project, for my own home, who also discovered an 1883 built model with an incredible number of building violations and code violations, mainly because it's a Lakeside home. It was built by a schoolteacher who did it himself on a very limited budget. These homes are poorly constructed, and we're coming around, in this round, and putting them in-shape so they can last the next 100 years. What I'm saying then is, please don't penalize all of Lakeside for what we've heard tonight. These cottages and this cottage specifically, needs to stay on its footprint to preserve the heritage of Lakeside. I've come to you many times, you know me well, I would not be pleading if I didn't really feel a strong urge to present it in this way. I am representing the statement on behalf of Municipal Services Committee of the board, who's put that in the document Ms. Dale is showing you that states the board is requesting that we maintain this footprint. And that's, that's what I have.

Ms. Roberts said, Jim, I hear what you're saying. And I've always agreed with you in many cases. But I guess my question to you is, how did we get here and whose issue is it that, that caused this to happen? **Mr. Switzer** responded, it's a number of issues amongst a number of folks. Our discovery with the roof coming off was probably within, less than hours. I mean, the roof came off the day we

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discovered it. To say that I look for the interior demolition would not be correct. That's for Ms. Dale and Danbury. I don't know; if I spot it, you know Ms. Dale and I talk regularly, but we at Lakeside only concern ourselves with the exterior façade, specifically but exterior view overall in the historic charm, character, that needs to be maintained. So, our rule of thumb and part of the Secretary of Interior's litmus test is, if you saw this house 40 years ago, will you recognize it when this project is done? And in this case, they'd come back and say, did this house get moved? That's part one. But for the most part, our intent is for them to look the same. So yes, to the builder's error. Yes, to the people physically doing the work. Basically, when the builder was out with COVID; I give them credit for saying this wasn't done right, we have to do it, right. I give them credit for saying, 'I can't leave rot here and build over it'. That's how Lakeside homes got in this way. They, they started as tents and then plywood was added over tenting material. And then we come along and take 1" walls out. I've seen three houses just this past year, with walls that were 1" thick, and I just marvel at the fact that somebody thought it was a good idea to build on top of it. I don't know if I've completely answered your question. But there was a number of errors here, but I don't want those errors to be as weighted as the fact that we want to have the character of Lakeside remain as much as possible intact for the next 102 years.

Ms. Roberts said, and Jim, I have the utmost respect for you. But when you say that you only look at the outside and the roof, Ms. Dale found that and came to you from what I understand. Mr. Switzer replied correct. Well, again, that roof; I go by that construction project every day as I go into the office. And when I went by, there was a roof at 8a.m. She called me around noon, or somewhere around that timeframe and there wasn't a roof. I'm not omnipresent. I can't be everywhere. Ms. Roberts said she hears him.

Ms. Grentzer asked if there were any more questions or any more comments from anyone.

Ms. Roberts made a motion to close the public comment segment of the hearing, seconded by Mr. Shetler. All were in favor and the motion carried.

Mr. Fetzer motioned to recess into executive session to deliberate the merits of the case. Ms. Roberts seconded the motion, and the roll call vote was as follows: Mr. Shetler – yes; Mr. Fetzer – yes Ms. Roberts – yes; Ms. Bauer – yes; Ms. Grentzer – yes. The motion carried and the Board recessed at 7:22p.m.

Ms. Roberts moved, and Ms. Bauer seconded the motion to reconvene. The roll call vote was as follows: Mr. Shetler – yes; Mr. Fetzer – yes Ms. Roberts – yes; Ms. Bauer – yes; Ms. Grentzer – yes. The Board reconvened at 8:09p.m.

The Chair asked Ms. Dale to read the Findings of Fact for BZA Case #2022-001:

With regard to BZA-2022-001 being a request for an Area Variance from Section 7.12.C to allow more than 75% of a nonconforming structures floor area to be structurally altered and restored (100% proposed) for the property located at 351 Cedar:

1. The property in question **will** yield a reasonable return and **can** be used beneficially without the variance because the property can be used for a single-family residence. Whether the original house remains or not, the highest and best use of the property is a single-family home.
2. The request **is** substantial because the nonconforming structure is prolonged if the variance is approved, and the structure will not become more conforming in any way.
3. The essential character of the neighborhood **would not** be substantially altered by the variance and adjoining properties **would not** suffer a substantial detriment as a result of the variance because a major project addition, and variances needed for that were already approved without moving the house and nothing changes in regards to the placement of the structure on the property with this additional variance request.
4. There is **no** indication the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because all utilities are available to the property and will have to be reinstalled to the regulating agencies standards.
5. The property owner states they **were** aware of the zoning restrictions at the time they purchased the property.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by either following the drawings that had been approved, by removing the house and building all new, or by moving the house into more compliance. The applicants created their own hardship by voluntarily modifying the structure in a manner that required compliance with zoning requirements.

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7. The spirit and intent of zoning **would not** be observed, and substantial justice done by granting the variance because the owner wants the protection of nonconforming status to apply to new construction. In addition, any practical difficulty alleged was self-created.

Mr. Shetler moved that the Board adopts and makes the findings of fact as read by the recording secretary and that after considering and weighing these factors, the Board finds that Decision Standards(s) (1) (2) (6) (7) weigh more heavily to show that:

- a. Practical difficulty **is not** sufficient to warrant granting the Variance requested.
- b. There **is not** a preponderance of reliable, probative and substantial testimony; and
- c. There is evidence that **does not** support the applicants request for a variance.

Therefore, the Variance should be accordingly **DENIED**.

Motion Seconded by Ms. Roberts. Roll Call Vote was as follows: Mr. Shetler – yes; Mr. Fetzer – no; Ms. Bauer – no; Ms. Roberts – yes; Ms. Grentzer – yes. Vote 3-2 the motion passed. The Chair stated that the application has been denied. Ms. Dale stated that those in attendance for this hearing were free to leave the meeting, or they were welcome to stay on for the next case. Ms. Dale said she would be in touch with the applicants later this week.

**Adjudication Hearing
Case BZA #2022-005
177 Kenton Row
Gehrlein**

Request for an Area Variance from Section 7.12.C to allow more than 75% of a nonconforming structures floor area to be structurally altered and restored (100% proposed).

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none. Mr. Fetzer moved, and Mr. Shetler seconded the motion to open the public hearing. All were in favor and the motion carried.

The Chair asked the Zoning Administrator to give an overview of this application. Ms. Dale stated the applicant is requesting to voluntarily demolish, remove or structurally alter more than 75% of the floor area of a nonconforming structure and restore & rebuild the single-family home in its same location on this property.

On April 26, 2021, the applicants received Zoning Permit #2021-077 (**Refer to Twp. Ex. 2**) to allow for a 14’5” x 26’3 3/8” 1st floor addition and a 9’ x 15’ 7 3/8” 2nd floor addition onto the rear of the house. The drawings attached to that permit are dated 03.26.2021. On sheet SP-2 there is a notation on the garage that stated, *“Future Garage requiring future HPDRB & Danbury Zoning Approval”*. On sheet A-2 of the permit drawings, there is a notation on the 2nd floor, floor plan of the existing portion of the house that specifically stated *“No interior work to 2nd floor area shown hatched to be done under this permit. Future work to be completed under phase 2 & separate permit”*. Staff had multiple conversations and emails with the Feick Design Group prior to the plans being formally submitted for the zoning permit regarding Section 7.12.C and the 75% language and thus is in-part why the plans were noted as they were for a 2-phase project and no work was to take place on the 2nd floor.

According to the zoning inspection notes, an inspection was conducted in Lakeside on May 26, 2021, with no work started. It was then noted that construction would not begin on this project until the Fall 2021. The next inspection took place September 29, 2021 and noted that site prep was starting at the property. Another inspection took place in Lakeside on October 27, 2021, and notes that preliminary work had started to lift the house and prepare for the new foundation.

On December 1, 2021, the inspection of the property showed that the house was still lifted in place and the foundation started. However, the footer to a future garage was also poured, and demo and new framing was taking place on the 2nd floor of the structure, which was all specifically called out on the plans as not being included with the permit issued in April and was to be done under a separate permit. At that point I completed my other inspections in Lakeside, reached out to Mr. Switzer and requested that he join me, if he was available, to look at this property with me. After revisiting the site with Mr. Switzer, we then located the contractor’s son on another job site and asked to see the drawings they had for this job. The drawings they were working off did not have the Ottawa County Building Department stamp of approval on them, were dated 10.27.21 and were not the same plans that were issued with the Zoning Permit in April. It was also confirmed with the Building Department that no permits had been issued from them for any of the work being done.

A Zoning Stop Work Order (SWO) (**Refer to Twp. Ex. 1**) was prepared and sent December 2, 2021, at 10:31a.m. via email to the homeowner, contractor, and architect, which included the photo’s date stamped 12/02/21 and are included in your packets as photo’s A-E. Ms. Dale explained that this is what the site looked like at the time of the SWO. Later that afternoon, there was an email from John

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Feick with Feick Design Group (**Refer to Twp. Ex. 4**), on how they intended to potentially move forward with the project and if the SWO would be lifted. My response to this is also included. In summary, I said ‘no’ I would not lift the SWO. Josh Welfle with Feick Design Group emailed that same afternoon (12/2/2021) with a submission for a zoning permit for the detached garage. The garage had undergone review and received approval from Lakeside on 6/5/2021. There was a slight delay in issuing the permit because the applicants were trying to decide if they were going to make it slightly larger (which would have then required re-review by Lakeside) and the drawings that were submitted for the zoning permit were not the same, dated drawings, that had been presented and approved by Lakeside back in June. The applicants decided to keep the garage the same size as what had been reviewed and approved by Lakeside, thus the zoning permit for the garage (#2021-277) was ultimately issued December 9, 2021. The drawings for the garage on the plans submitted with this application are slightly different than what is shown on the permit drawings for the garage, but overall, what’s on this application also meets the zoning requirements.

The days following the SWO, there were several verbal conversations with the contractor and Mr. Welfle regarding the foundation and work that had been done up to this point at the property, primarily in regards to how they needed to secure the site and foundation. I went back to the property on December 7, 2021, and took additional photographs (**Refer to Twp. Ex. 3, Photo’s A-M**) of the foundation to document where things were, as well as what was able to be seen of the interior of the structure. Since the house is lifted, I was not able to access the inside of the structure to fully document what has taken place inside. Nonetheless, the photos show that the entire inside of the house has been gutted and new framing has taken place, specifically on the 2nd floor where no work was supposed to occur. Enclosed is an email exchange between the homeowner and I (**Refer to Twp. Ex. 4**) dated December 8, 2021. These emails reference foundation work to be done following the SWO and reference a driveway easement on the property. I had suggested the Board review these emails for background context that explains what discussion has taken place with the applicants, as some of this may come up during the discussions of this hearing. The applicants have also mentioned in their narrative statement, and provide a copy of, the driveway easement.

Ms. Dale summarized, essentially, what was explained in the email correspondence with the applicants and owners, was that it was not my suggestion to finish the foundation or set the house back down. It was my suggestion that they be in contact with the Building Department. I was not giving permission to continue any other work, but that they be in touch with the Building Department and whatever work they felt they needed to do for a safety reason, or an integrity of work reason, that they do the absolute minimum possible to the foundation. So, that’s what they were advised. Since you received your packets, Mr. Feick submitted an email to me on January 5, 2022, and January 6, 2022. I will be entering this into the file as Applicant’s Ex. 2, with photographs of the work that they completed in regards to the foundation. I will let him explain to you what was done, but we have three photographs from him. Those photos and the email will be entered into the file as Applicant’s Ex. 2.

The applicant has submitted plans with this application (**Refer to Applicant’s Ex. 1**), now dated 12.22.21 drawings that shows all the work to be completed to the structure, which includes both phases, or all of the 1st & 2nd floor, along with the detached garage. According to the 1st & 2nd floor plans on Sheet D-1, all the dotted lines are walls and fixtures that have been removed or are planned to be removed, in addition to the wall finishes on the outside walls, which are all down to the studs from the inside of the structure. What were once defined spaces are now not because all of the walls, with the exception of maybe two have been removed. The state the house is in now is a wide-open 1st floor and a wide-open 2nd floor with no specific defined spaces and no way to definitively know how the house was used previously, except on these drawings, there is no way to confirm the applicant’s argument that 42% of the house will be reestablished in a similar way because nearly everything has been gutted inside. The applicant’s state that the changes are simply cosmetic. One could argue that the demolition down to the studs and full removal of walls, flooring, structural flooring on the porch, the staircase, all mechanical, electrical, and plumbing is not superficial. The only way at this point to create similar spaces that were once in the house is to restore and rebuild what has been removed. Nowhere is 25% of the floor area of the structure physically, or indicated on the plans, as being preserved.

The original house is nonconforming because it sits 0’, or on the west, front property line where 5’ is required. The overhangs on the porch on the west side also encroach into the road right-of-way by 1.7’ (18”).

Section 7.12.3.C of the zoning resolution states the following:

Section 7.12.3.C. Modifications to Nonconforming Uses:

- C. *A nonconforming use or structure which has been damaged by fire, explosion, act of God, or the public enemy or demolished, removed, or structurally altered voluntarily, to the extent of seventy-five (75) percent or more of the floor area contained in the building or structure at the time of damage shall*

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not be restored, rebuilt or enlarged except in conformity with the regulations of the district in which it is located.

Floor Area is defined as:

Section 2.2 Definition of Floor Area:

The sum of the gross horizontal area of all floors of a building, measured as a square footage, from the exterior faces of exterior walls or from the center line of party or common walls separating two buildings. Floor area shall include:

- 1. The area of attics when finished and habitable for residential, commercial, or industrial purposes with a valid certificate of occupancy; and*
- 2. Elevator shafts, stair wells, and closets on each floor; and*
- 3. Any covered, roofed-over space such as a garage or carport for off-street parking attached to the principal structure, including roofed enclosed or unenclosed porches, breezeways, patios, decks, interior balconies, and mezzanines.*

The following shall be excluded when calculating floor area:

- 1. Attic space providing structural head room of less than 7 feet; and*
- 2. Basements or cellars*
- 3. Open, uncovered steps, terraces, patios, decks, balconies and porches; and*
- 4. Any portion of the building that would otherwise be included in the floor area but encroaches over a property line onto an adjacent parcel or road right-of-way.*

The purpose of nonconformities is outlined in Section 7.12.1:

- (1) Define the legal status of buildings or land uses which do not conform to this Resolution but which were in operation prior to the enactment of this Resolution (essentially protecting something that was previously and legally existing), and*
- (2) To provide either for the conversion of nonconforming uses into conforming uses as soon as reasonably possible or for their eventual and equitable elimination.*

Mr. Fetzer said excuse me for the interruption, but I just want to clarify, at the beginning of when you started talking about this section of the nonconforming things, you mentioned that the overhang of the porch sticks out into the road right-of-way by 1.7 feet. Ms. Dale said yes. Mr. Fetzer said that's not 18", that would be 20.4". Is it 1.5 feet? Or is it 1.7 feet? Ms. Dale pulled up the site plan from the zoning permit and it calls it out as 1'7". Mr. Fetzer said, oh, okay, that would be 19". 1.7' is different than 1'7". Ms. Dale said she will note this in the minutes.

The applicant is requesting to voluntarily demolish, remove or structurally alter more than 75% of the floor area of a nonconforming structure and then restore & rebuild the single-family home in its same location on this property without conforming with the "L" Lakeside district requirements. The original 2-story house with the porch was 2,415s.f. They were required to preserve 603.75s.f. of the house, which would have been accomplished if the 2nd floor had not been completely gutted. Again, as aforementioned, this was discussed in-length with the architect prior to the zoning permit being applied for and is in-part why the plans originally indicated that no work was to take place on the 2nd floor. For the applicants to indicate otherwise is just not accurate.

If the plans submitted with the permit back in April had properly shown the work that has, or was intended to take place, or at the very least, if revisions had been submitted once it was determined what needed to happen once on the job site, then this should have and could have been addressed sooner. To a degree, we are in this position as a result of the applicant's own actions of preparing different drawings than what was approved by Zoning. In their very first line of their narrative under Scope of Work, they state "*The project consists of a whole house remodeling with new insulation, interior finishes, mechanical, plumbing, and electrical services.*" According to their narrative statement, there is really no denial that more than 75% of the floor area has been voluntarily demolished, removed or structurally altered and there is not proof provided that 25% has remained intact or untouched.

The Board must consider if the proper, factual drawings had been presented, before the demo and reconstruction occurred, would the variance have been granted? If the Board denies this request, then there would be no other option but to move the whole house into compliance with the underlying zoning requirements and setbacks. If the Board approves the request, then work would be able to be continued once new, proper drawings and zoning permit is issued with the house sitting on the property right where it is today.

Ms. Dale concluded by reviewing the decision criteria the Board would be considering during their deliberations. Ms. Dale said, before I finish, there have been at least 4 exhibits submitted, 3 from

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neighbors, 1 from Lakeside. We will go through those during the public comment portion. Some of the residents that submitted letters are on this Zoom feed, so I don't know if they will speak or let their letter stand as what they wanted to say. We will address those and officially enter them into the record when we get to the public comment portion of the meeting. At this point, I know a lot of you were on for the prior hearing, but we're going to do it the exact same way. We're going to now move to the applicant, their agents; the architect and the contractor who are on. We're going to swear them all in individually that way then we can freely ask questions of all 3 of them at the same time and all 3 of them can talk about this project at once without having to stop and swear them in. Then we are going to move into the public comment portion. With that said, the board members are welcome to ask me any questions they might have. And then we will proceed.

The Chair asked if the Board Members had any questions for Ms. Dale. Mr. Shetler said he had one question for Ms. Dale. You have had with the architect in depth conversations about this project? Ms. Dale said yes, with the architect's firm. Yes with Mr. Welfle. Mr. Shetler said okay, thank you.

Ms. Dale explained that Mr. John Feick & Mr. Josh Welfle from Feick Design Group, Architects/ Agents, Andrew & Jennifer Gehrlein, Owners/ Applicants and Mr. Tom Dearth Contractor Agent were all on the Zoom feed.

Jennifer & Andrew Gehrlein, Owners/Applicants, 2706 Claythorne Road, Shaker Heights, Ohio and 177 Kenton Row, Marblehead, Ohio were both called upon and both sworn in.

John Feick, Architect/Agent, 224 E. Water Street, Sandusky, Ohio was called upon and sworn in.

Josh Welfle, Architect/Agent, 224 E. Water Street, Sandusky, Ohio was called upon and sworn in.

Tom Death, Dearth Remodeling and Construction, Contractor/Agent, 518 Erie Beach Road, Marblehead, Ohio was called upon and sworn in.

Mrs. Gehrlein started the presentation on behalf of the applicants and said, so hi everyone. Good evening and thank you so much for spending all this time to volunteer on the board and to hear our variance request tonight. As a quick introduction, I'm again Jen Gehrlein, and this is my husband, Andy, and we live in Cleveland. We've been married for 25 years. We have three kids, and this will be our 18th summer coming to Lakeside. I grew up in Sandusky, and I went to Perkins High School. I would come to Lakeside a lot to visit family and friends and spend a lot of time in the Danbury area. I've also been involved with the Lakeside community too. I volunteered on the Lakeside Association Board for 6 years and served as the Finance Chair of the Board, when we put in the kids splash zone, the Teen Center, the pickleball courts and the Grindley Aquatic Center. So, very committed to Lakeside and the area. We started renting in Lakeside in 2004, and then we bought a home at 428 Lynn in 2014, I think when we bought, 2008 excuse me, and then we bought our home at 177 Kenton Row in 2018. We love its central location and dreamed from the start, of updating it and winterizing it so that we could spend more time in the Danbury area. Our house was built in 1890 and has been used in the same way, in the same place in the heart of Lakeside for over 130 years. The remodeling work that we had wanted to do on Kenton row is a huge project for us and we have never taken on a project of this scope. We are here today really to apologize for what happened and to sincerely ask that you grant our variance request. So with that, I'm going to turn it over to my husband, Andy.

Mr. Gehrlein said thank you, Jen. So as Jen said, we are here this evening, to apologize to the Board and to explain what happened. We want to assure you that we did not intentionally violate Danbury zoning requirements. We hired John Feick and his firm as our architects, Tom Dearth and his company as our contractors. We trusted them to make sure that everything was being performed appropriately and to code. Our architects worked closely with Mrs. Dale to come up with a way that would allow us to perform the projects in two phases. But the bottom line, unfortunately, is there was a miscommunication between the architects and the contractors, in terms of these restrictions and the phasing of the project. We do realize there were multiple versions of the plans on site and acknowledged this could have led to confusion regarding the phased construction. We want to address that. These updated versions arose from nonstructural and internal decorating changes that we made to the preliminary drawings that were used for the zoning approval, prior to that level of the interior construction detail. We also wanted to have one complete set of whole-house drawings for just ease of reference, to make sure that the work done in Phase 1 would add up with the work to be performed in Phase 2 when it was eventually completed. Even with these updated drawings, we did not intend for the work to be all performed all at once. Again, there was no change to the overall structure and design with these different versions. We are asking you to please grant our variance request and allow us to put the house back down in its historical location, so that it lines up with the rest of the homes on Kenton Row, as we believe this is the solution that works best for us, for our neighbors, for Lakeside, and for the Danbury Zoning Board.

Mrs. Gehrlein asked Ms. Dale to pull up on her screen some of the photo's that were submitted of their house. After a short discussion, these were the photo's identified in the packet under Applicant's Ex. 1, photo's A-H. Mrs. Gehrlein continued, this is the street view of our home when we started the

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project (Photo A), if you could just page down Ms. Dale. The next photo here (Photo B), this shows, just to kind of level set from what you've already been presenting quickly, this is the rear addition of the house that was removed. It was an addition to the house that was of questionable structure to begin with, so that was removed. You can page down please, thank you (Photo's C & D). This just, this shows the interior of our home on the left. Really the second floor itself was 4 of the rooms, bedrooms, on the second floor did not have any walls on the studs. I'm not a structural expert but we did not demo those. Those walls remained bare as they are. The floors on the second floor, the original floors and ceilings remain on the second floor. You can continue, yeah thank you Ms. Dale (Photo's E & F). So, this is another room you can really see the, you know, the same exact water spot there that existed when we used the home. You can keep going down, thank you very much (Photo's G & H). And just again another room. Really only 2 of the rooms on the, let's see here, the bedrooms on the second floor had drywall siding on them, so that was one point we wanted to show, and I don't know if you can keep scrolling down, I don't know if any of the walls show, no they don't unfortunately, but you can keep going. The walls really, just pause for one second here, just to make the point on the second floor, the bedrooms there the walls you can see in the in the corner of the picture with the couch there (Photo G), that it really was just beadboard strips on 2 x 4's and was not structural in nature. It was really, very thin nonstructural, non-code walls on the second floor. If you go down to the next pictures here, this one yeah, thank you (Sheet EX-1). So, this is the first floor, and this really just shows, you know, we're going to be reusing, a lot of construction is going to be the same use afterward we're done. We'll have a family room in the same area, a dining room, a kitchen, and the porch in the same areas of the house. So really just to make that point, so thank you. And that the walls, the exterior walls of the home there are mainly remaining in place. And then if you go to the next picture (Sheet EX-2), this is maybe, you know, we're going to be using the rooms with the same floor, and the same ceiling, in the same places on the second floor, primarily there. One thing we did hope to do was really just put a hallway down the center of the home so that people wouldn't have to walk through bedrooms to get to other bedrooms. So that was; and to bring the walls up to code with current electrical, and support. I just wanted to show that as we talk, but I understand, you know, we appreciate being here tonight. We know that part of your job for tonight is to make a decision on this, and to do that you're going to apply the standards that Mrs. Dale reviewed. So, we responded to a lot of this in our application. I guess tonight, we just wanted to spend some time to highlight some things that we felt were important from those, and to give you our views on how those could be applied if you decide to do so.

Ms. Gehrlein continued, so the first, one of the first ones we wanted to highlight was whether the variance is substantial. We believe that we are not requesting a substantial variance. We are simply requesting to put the home back down in its original location, in the same location that it's been in for the last 130 years. Our issues were caused by work that was performed primarily on the second floor, which was really not substantial. All of the second-floor bedrooms, as we just reviewed, will be in the same location in the house as they were previously. And at the end of the day, you know, we're only bringing these interior walls and electrical up to code in those bedrooms and updating the bathrooms on the second floor. We did remove and demolish that rare edition of the house. So that is something that was really not safe, so that was demo'd, we do admit that. But really on the floors of the ceilings upstairs, for the group, you can see where the where the beadboard walls used to be. Ms. Dale showed Photo's C & D on her screen. Ms. Gehrlein said, we have all of the beadboard. Really, I understand it was removed, really to put up braces. If you did go up into the second floor, and we should, I could find some pictures to show you, but there's really just beams, wood that's stretched across from the center out to the sides to support the structure. That is what would be viewed on the second floor.

Mr. Gehrlein said, if I could just add to that. I think the point is, it was characterized as framing of new walls on the second floor. It was not that. It's difficult to see from the street view pictures, but it simply is a temporary wood wall, or not wall, bracing with again, diagonal strips. You can actually see the diagonal strips through the one street view, a couple of the street view pictures really just to brace the house for its lifting when the foundation was being performed.

Mrs. Gehrlein continued, so, the work that we've done really was not substantial and we believe that the variance request itself would, in granting it, would not be substantial. When Mrs. Dale contacted us about this issue, you know, we talked to you, and we offered to put the beadboard back up and to continue to do the work in phases after we lowered the house. We believe that this, if this would still be allowed, then no substantial variance would be needed and we would continue the work in phases, if that would be acceptable to the Board. Really, we would stop work on the second floor and just finished the bathrooms if that is something that you feel would be appropriate. We really are looking; we really would just like to be able to put the house back down in a way that you all would approve. So then, one of the other decision factors is whether the essential character of the neighborhood would be substantially altered, or whether adjoining properties would suffer a substantial detriment as a result of the variance. As to the essential character, we believe that not granting our variance request and requiring us to move our home would dramatically change the essential character

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of our street. As all the homes on Kenton Row have the same street frontage and have stood in a line together since Lakeside began. Kenton Row is also very central to the Lakeside community sitting right on Bettinger Park. Making us move the house would disturb the look and feel of the street and change the essential character of our street in Lakeside's central hub. We would be very, very sad if that was, if we were asked to do that. The next would be as to whether it would suffer our neighbors, if adjoining properties would suffer substantial detriment. We believe that if the Board were to deny our request, we believe that it would result in a substantial detriment to our adjoining neighbors, and the Lakeside community as a whole, as we all would have to live with the loss of, you know, the conformity and the character of that street. But conversely, we don't believe that there would be any discernible effect, and no substantial detriment at all to our adjoining neighbors if the variance was granted, as we would just finish the project and put it back down in its place. The Kinney's, our neighbors to the north, would face, we believe, a substantial detriment if we were required to move the house directly back to the east, as we would violate the driveway easement that is recorded on the title to our properties, as Mrs. Dale said. The Kinney's submitted a letter in supporting our variance request due to their love of the street and the driveway easement between our homes. We appreciate that our neighbors Dick Kinney and Herb Kinney, are here tonight to speak on behalf of their family's trust. So, thank you for that. Our neighbors to the south, Rich and Mary Ann Kelmer, would also, we believe, face a substantial detriment if we were required to move the house to the south and then to the east to avoid the Kinney's driveway easement. This would bring our homes closer together and potentially infringe on your use of the home. We believe it would be in our mutual best interest if the variance could be granted for all of the reasons we're talking about tonight. We understand that Rich & Mary Ann are attendance and have submitted some materials, so we are interested to hear their thoughts on this. So, one of the other standards that we thought was applicable was whether the spirit and intent behind the zoning requirements would be observed in substantial justice done by granting the variance. In here, I know we're looking at Section 7.12.3.C and Mrs. Dale had stated it, but in summary, it's "*A nonconforming use or structure which has been demolished, removed or structurally altered voluntarily, to the extent of 75%, or more of the floor area contained in the building shall not be restored, rebuilt or enlarged except in conformity with the regulations*". So, we know that the zoning inspector, Mrs. Dale worked closely with our architects to direct us, to structure the project in phases, and we appreciate her efforts and their efforts. I guess the fact that we could have done this work in phases and achieved the same result of keeping the house in its current location demonstrates that the spirit and intent of the zoning code would be met by granting the variance. Although we agreed to the phased approach at the time, and we appreciate the input we received from the zoning inspector, looking back, we respectfully have concerns as to whether the spirit and intent of that section really applies to the project. Because as we discussed and showed, we're only remodeling the interior nonstructural aspects of the house, in that, those bedroom areas that we talked about and we're not demolishing the use or the structure. John Feick, our architect will speak about whether our project should have been considered as a minor modification under 7.11 instead of the variance [indiscernible]. The other one to consider is substantial justice. Would substantial justice be done by granting the variance and respectfully we believe that substantial justice would be done by granting the variance. Asking us to move our home, we will do whatever the board decides, but that would result in a substantial injustice to our neighbors and the Lakeside community. We believe the Lakeside community would be harmed by a substantial injustice if we were forced to move our house back to meet the current setbacks, as all the other homes on Kenton Row and all users of Bettinger Park would no longer view the conformity of street frontage that is part of the charm and historical detail in this part of Lakeside. We believe the Lakeside HP-DRB would not want us to move the house. It would change the essential character and historic charm of our street and would be a substantial injustice to the Lakeside community. We also believe that the HP-DRB will probably not approve removing the front facade or making changes to the back of the house or doing anything like that. We designed our project so that the house looks essentially the same from the outside, and so we feel that they would have a problem with that. We were pleased when the Lakeside Municipal Services Committee submitted a Request for Variance Deviation to the BZA in support of our position and we appreciate Lakeside's support, and we would welcome any input from Jim Switzer and Dale Knoble to speak on those matters. If the BZA would be willing to grant our variance, we believe that the approval can be done in a way that does not establish an unworkable precedent because of our unique location in Lakeside, in the center of Lakeside on Bettinger Park, with all of the homes on our street lined up in a row and the existence of the driveway easement behind us, in the back, that our house would have to move east to west instead of north to south on the street. In summary, we believe that the variance standards would support granting our request and we hope that BZA decides to do so because it's not a substantial variance to let us put the house back down in its current location, the essential character of Kenton Row in the Lakeside community would be injured, it would not be a substantial detriment to our neighbors to allow us to put the house down, it could be, to have us move the house. We believe the spirit and intent of the 75% requirement would be met by granting us, and or, asking us to continue

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with the phased approach. We believe substantial justice would be served since we relied on our professionals in this regard. We hope that you will, will grant our request. I would like to turn back to my husband.

Mr. Gehrlein said, just a few more thoughts that really address a lot of the specific, in our opinion, characteristics and requirements of the of the zoning rules, we also thought it would be helpful to really understand the thoughts and opinions of our 5 adjacent neighbors as part of your decision process as well. So, we attempted to gain an understanding of all of their positions, you know, just to help with your information for tonight. We also as part of that realize that the zoning process allows for an appeals process, such that any decision that is announced tonight would technically not be final for another 30 days to allow for that appeals process. As part of our request, you know, we're also please asking, if there's any chance that you do agree to approve our variance request, we'd also respectfully request that you consider waiving the appeals process so we could just resume our work and get back to business as soon as possible. In terms of those 5 adjacent neighbors, you know, we know that Kinney's support our variance request based upon their submission. We believe that Dick and/or her plan to speak tonight and give you some more color to that. We asked John Feick to reach out to the 4 other adjacent neighbors just to get an understanding of their position. And also, if they were willing, if the Board voted in our favor, if they [the neighbors] were willing to sign a brief letter saying that they would not appeal that decision. In doing that, we and John Feick reached out to the Kelmer's, but we believe it's their desire to just personally express their thoughts and opinions tonight, but we would hope that they would not appeal our decision if that was the favorable decision. In terms of the neighbors on Jasmine, on the street behind us, we reached out to John and Kelly Wright at 170 Jasmine, they border one of the back corners. We did not get any response for them in any fashion. We did talk to, or thru John Feick, he was able to get in touch with Bruce Ashmore and Shelly Rappold at 182 Jasmine. They did sign a letter saying that they would not appeal a decision that approved our variance request and I know that it was one of the exhibits that you were showing earlier. Although we don't have any formal letter, we are happy to report that just through discussions that John Feick, text discussions that John Feick had with Vida McCray directly behind us 176 Jasmine, they indicated that they would not appeal any decision in our favor, as long as there were not any changes to the exterior structure of the originally approved plans, so, which is the case. We realize, you know, those positions are not binding, in several people will express in probably more detail tonight their thoughts, but we thought again, it would be helpful as part of your decision process to hear the opinions of those 5 neighbors. So that really concludes Jen and my prepared comments tonight. We are of course happy to answer any questions you may have. As we said, we've asked some others to speak on our behalf. So, Mrs. Dale, we are done. We will turn it over to you to whatever order you want to do here. Well, we really appreciate and thank you for the consideration here.

Ms. Gehrlein said, yeah, I think Mrs. Dale we were going to ask to see if Mr. Kinney, if either Dick or Herb wanted to speak next. Ms. Dale said actually, we would have John, Josh or Tom speak since they are part of the applicants. Mrs. Gehrlein said okay, thank you.

Mr. Feick said, I just want to start saying, you know, we're all aware that Ms. Dale is a very, very thorough and she has the best interest of Township, always in her work. We respect her opinion; we take her comments very seriously. Our firm works in over eight different counties, you know, in and around Ottawa County, and I don't think there's a more capable zoning administrator anywhere. I mean, we really have a gem here, and we appreciate what she's done for us. We typically when we start a project, send her a site plan early on in the design process, to verify if any previous work had taken place. so that we know whether or not the project is a nonconforming house. If it's an addition, we want to know how big we can go, or if the house is conforming, if there was something else that had happened, so we're aware of it, because a lot of times these houses change hands, that's when we get involved with a new project. And Kenton Row was no different. With the proposed work was discussed at length. Ms. Dale brought up to 75% issue and after discussions, she made the suggestion that if we brought the project into two phases, and submitted a zoning permit for phase one, that the project, we could have a zoning permit issued. Now, I personally didn't agree with Ms. Dale's interpretation that the project is a demolition over 75% of the structure. Because there's really no definition in Danbury zoning regulations that says what demolition is. We actually consider the interior work as remodeling and as part of our original submission, that's what we had classified it as. However, it made more sense at the time to proceed through with two phases of the project as she suggested. It's, painful to go through, for both you guys and for us, the appeal process because it takes a lot of time. You know, it's, you know, the rules are in their place for a reason and, you know, we have to have very good reasons as to why we wanted to have a variance. Again, it was it was my opinion, it's also my opinion, that what we do on the interior house is not under the authority of Danbury zoning. My reasoning is based on the zoning resolution itself, where Article 1 states, in this title that it says, *"The resolution provide for the zoning of the unincorporated area of Danbury Township, Ottawa County Ohio, by regulating the size, the location, the height, the use of the buildings and structures and the area and dimensions"*. It does not

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mention anything about the interior of the house. And from Section 1.4 General Purpose, *“For the purpose of promoting public health, safety, morals, comfort, general welfare, to conserve and protect property and property values; to secure the most appropriate use of land and facilitate adequate but economic[al] provisions of public improvements; the Board of Trustees of this Township finds it necessary and advisable to regulate the location, the height, the bulk, number of stories, and size of the buildings”*. Doesn't have anything to do with the interior of the building. Also, the only drawings that the regulations require us to submit when we make an application is the site plan. No interior drawings are required. So, it's again, my opinion, that there is nothing in the sections that, the, beginning of the article states that regulates the interior of the house. To me, the interior of the house is regulated by the Building Code, which is the Ottawa County Building Inspection Department. As to Ms. Dale's Stop Work Order, she references Section 7.12.3.C., and I quote it says, *“Structures that were damaged”* and the key word here is 'damaged', *“by fire, explosion, act of God or the public enemy or demolished, removed or structurally altered voluntarily”*. The key word here is 'structurally'. We've gone over the definition of Floor Area, it's this gross square floor area from the outside walls in. It doesn't talk about interior walls. It just talks about the exterior walls in. It's my opinion that these sections don't apply to our situation for the following reason. In the second floor, all of the original floors and all the original ceiling finishes remain intact. They have not been removed, and they're going to be reused. The existing stairs from the first floor up remains in its place. Nothing in the second floor was structurally altered. All the interior partitions that were there were all non-structural. All of the exterior walls of the house, they are original, and they all remain, the entire roof remains. And the height of the house, when it's set back down on the foundation, will remain the same. In sum, when all the work is completed, the front of the house and the two sides look the same as prior to construction. The only real difference will be the rear of the house, and instead of a second story old addition, which didn't match the construction, there will be a new addition, but it will match the construction of the original house. And the floor area of that addition, it will be under the 20% limit allowed by the zoning regulations. It was my opinion, is my opinion, that our original request for a zoning permit covered the entire project, should have been approved as a Minor Modification because per your regulations, we meet the definitions of Minor Modifications. We have not damaged the house; we are remodeling the house.

Ms. Dale asked what section is that John? Mr. Feick said, which is that? Mrs. Gehrlein said Section 7.11. Ms. Dale said, that's Conditional Use Language. Mr. Feick said I believe it as, yes. Ms. Dale asked, is this a Conditional Use? Mr. Feick said, I don't have, I don't think I've got it here. Ms. Dale said, I have section 7.11 on my screen. Mr. Feick said, yes, that's, it's the 'Modifications to Conditional Uses' is in that section. Ms. Dale said, okay. Is this a Conditional Use? Mr. Feick said yes. Ms. Dale asked, how is it a Conditional Use? Mr. Feick said the property is right now, is a nonconforming use. So, by rules, or I guess by your regulations, it is non-conditional. Ms. Dale said, okay, so we're going to, we're going to walk through this John, okay? The Use Matrix [Section 3.4], which lists every use Permitted or Conditional, is on the screen. It's in alphabetical order. Under "N" Nonconforming Uses are not specifically listed as a Conditional Use. So, Section 7.11 is not applicable in this situation. Mr. Feick said okay, but the reality is, the interior of the house is not part of Danbury zoning regulations. Ms. Dale said that's your opinion. I'm not going to argue....Mr. Feick interrupted and agreed that is his opinion. That is why we didn't want to, that why we didn't want to bring it up back in April when we were doing this, because it'd be an argument that we didn't want to get into. I'm just pointing out now, that in your code, your regulations, there is no definition for demolition. That fits our position here. As I stated, the house as it sits there today, and when it's done, the original outside walls, the original roof, the interior floor, original floors will still, that are there now, are going to remain. So, all we've done is some remodeling on the interior. That's my point. Ms. Gehrlein said okay, yeah, thank-you John. Mr. Feick continued; we have not damaged the house. We're just remodeling it. Ms. Dale said okay, well, I just want to clarify that there's not, you cannot utilize section 7.11, which discusses Minor Modifications for Conditional Use when we're not talking about a Conditional Use. Mr. Feick said that's fine. Ms. Dale said, that's basically scratch from consideration. Your opinion so far up to this point is noted that we've heard you, okay. Mr. Feick said thank you. Ms. Dale said. now, I would continue on, but I did want to address the Conditional Use situation because I don't want to go down that path when it's not applicable in this situation. Mr. Feick said that's fine, I've made my point that what I felt was applicable as far as the interior of the house and if you have any other questions, I'd be happy to answer them now or let the other speakers talk and we can answer questions at the end. Thank you.

Ms. Dale asked, Jennifer, would you like Josh or Tom, do they have anything more that they would like to add? Ms. Gehrlein said, yeah, thank you, Ms. Dale. I think what we were going to do is really just be available for any questions that the Board had at this point. And then there are others to speak, but I guess they would be after the questions.

Ms. Dale shared that in order to ensure the adjoining property owners had a chance to have a say in this hearing who may not have been able to participate in the Zoom format, she allowed written

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statements due to the health crises situation. She reported that written correspondences were received by adjoining neighbors, but many of them are also on the Zoom feed. She said she will go through each person to confirm if they wish to speak for this case and enter their letters as official exhibits to the file when they are called upon. I do have RRK on who I believe is Richard Kinney. And then I have Herb Kinney on. I will share with the Board that the Kinney's, Richard, Jr. did submit to me, a 4-page written letter received January 11, 2022. It's going to go into the record as Kinney Ex. 1. Richard, there's two ways we can handle this. I can either read this letter verbatim into the record for you, or if you would like to defer the reading of it and present your own testimony you are welcome to do that as well, but the first thing we need to do is have you state your name and address and swear you in.

Mr. Richard R. Kinney, Jr. Trustee of the Kinney 'Kinnikin' Children's Trust, 12769 Via Donada, Del Mar, California 92014 and 169 Kenton Row, Marblehead, Ohio was called upon and sworn in. Ms. Dale asked Mr. Kinney if he would like her to read his letter verbatim into the record for him, or if he would like to defer the reading of it and present his own testimony. Mr. R. Kinney said in the interest of time, he would be happy to have it all read into the record. He asked if he could make a few comments then when she was done. Ms. Dale said yes. Ms. Dale read Mr. R. Kinney's letter verbatim.

Mr. R. Kinney thanked Ms. Dale for reading the letter into the record. Substantially, all we are really concerned about, and we're happy with the Gehrlein's and the efforts they've made to comply even though there have been some minor incompliances. We just want to be sure that the variance is approved and if not approved 100% and it's approved conditioned upon the removal of, the portion about moving the cottage. I can't think of any good reason to move the cottage. There is a saying in law, and it's a Latin phrase "*Res ipsa loquitur*", which means "*the thing speaks for itself*". I think if you approached anyone on the street and asked them, 'What makes sense?', I think they would say to you, it makes sense to leave it the way it is. What's accomplished, otherwise? I think it'll be good for anyone who's not wanting to approve the variance subject to the driveway issue, I think they should give a second thought because it's actually beneficial for them. I mean, it doesn't make sense. It doesn't make sense to be moving it a huge house like that to a place; and also, it doesn't help the driving. It really destroys the easement idea of having a space in the backyard where each benefits from the other side there for turning around the vehicle. No one thinks about that, but that's a big problem. When you turn around the vehicle, you've got to hit the corners, you've got to avoid the corners. Doing it the way it's done; it leaves a big enough space for even one of these bigger trucks that people drive now to make the turn. So, that's how we feel about it. We approve the variance conditioned upon, not approving the movement of the house and figure some other compensating issue or something, or just ignore that issue. If it doesn't make sense, you just ignore it. Okay, those are my comments. I appreciate it very much, you giving me the opportunity to speak because this is very, very important to the use of our cottage.

Mr. Herbert B. Kinney, 249 Cranberry Hwy., Orleans, MA 02653, AKA Cape Cod and 169 Kenton Row, Marblehead, Ohio was called upon and sworn in. I've spent 65 years, wonderful years on Kenton Row in Lakeside. The cottage means a great deal to me. It means a great deal to our whole family, which now numbers in the 40's to 50's. The conformity of Kenton Row is what gives its beauty, of the houses. It's been that way 130 years and to break that conformity in order to conform to a setback that was established long after those cottages were there, would actually create an eyesore that would be nonconforming to Kenton Row. Therefore, on that basis alone, I would like to see that taken care of. The Gehrlein's are people that I've gotten to know a little bit. They're the kind of people that we've always enjoyed in Lakeside. I do not believe they did any of this with real knowledge that it was happening and there was definitely no malice on their part or attempt to skirt around the regulation. What happened, happened. Now it has to be dealt with, I realize. I would also just add a couple quick comments to comments the Gehrlein's made. The addition on the back of the house, which was removed, does not agree with historic character of the house. I remember when that was built about 45 years ago, Mrs. Warner the then owner of the cottage, used it for a carport. I remember it being built. Also, the beadboard walls they're talking about upstairs, I'm very familiar with those. They have no structural value to the house in any way. We don't call them walls; we call them partitions in our cottage. While you all have to deal with your regulations as you see it, as far as what is proper and what's improper, the Board may require them can take an additional permit, from phase two or anything other, all we're asking is please, we ask that you put the house back where it was, and maintain the conformity of Kenton Row. Mr. H. Kinney concluded by saying, thank you for allowing me to speak. It's funny to be on this end of a hearing. I do appreciate the opportunity to speak in favor of the Gehrlein's petition for the variance.

The Chair asked if there were any questions from the Board. Mr. Shetler indicated he had a question for Mr. Feick. John did you have discussions with Kathy Dale, Zoning Administrator about the 75% modifications in depth? Mr. Feick said, Josh, from my office, had the discussion with Kathy on the 75%. Mr. Shetler said, Josh had the in-depth conversations with Kathy on that correct? Mr. Feick

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said yes. **Mr. Welfle** said, yep. Mr. Shetler asked, so Josh, did you relay that to your clients, the property owners? Mr. Welfle said, I believe over phone conversation we probably talked about it, but I think they probably didn't realize the extent of it. Mr. Shetler asked, you're not 100% sure you've relayed it to them? Mr. Welfle said, I believe I did. I will say I did. Over a phone conversation. But I don't remember. You know, I assume they didn't understand it fully. Mr. Shetler asked, who applied for the zoning permit? Mr. Welfle said he did. Mr. Shetler said along those same lines, and I'll direct this to the Gehrlein's and to the architect; who is the decision maker on this project, the approval? **Mr. Gehrlein** answered, we are. Mr. Shetler asked, would that be both of you, Andrew and Jennifer? Mr. Gehrlein said, we make joint decisions. We're married 25 years. I mean, Jen has a lot more interest and involvement in the specific design of the house. But we are a team and doing all of this, approving budgets, making decisions. Mr. Shetler said, can I ask you just a question? What are your professions? Mr. Gehrlein said, I'm in accounting. I work for a company here in Cleveland called Park Place Technologies. **Mrs. Gehrlein** said, right and I'm an attorney. I'm the General Counsel for a company called Arrow International in Cleveland. Mr. Shetler asked Ms. Gehrlein what her expertise was in and if it was zoning. Mrs. Gehrlein and Mr. Shetler chuckled, and Mrs. Gehrlein responded, I am not a real estate attorney. I am a corporate attorney. I'm not a real estate attorney or a litigator. I'm a corporate attorney. I'm the General Counsel for a company. Mr. Shetler said, alright, well, thank you. Basically, piggybacking on my question, did Josh have the conversations with you about the 75%? Mrs. Gehrlein said he did. Yes. He did describe the 75% requirement.

Ms. Roberts asked if Jim Switzer was going to speak? Ms. Dale said eventually, we'll get there. I think we're doing some follow up questions from what's been presented so far and then we'll continue on. Ms. Dale said are there... Ms. Gehrlein started to say something, Ms. Dale said go ahead Jennifer. Mrs. Gehrlein said, no, I will wait for questions, thank you. Ms. Dale asked if there were any other questions from Board Members up to this point?

Ms. Grentzer said, well, I was wondering, why did they have three sets of plans? And also, why wasn't the Ottawa County Building Department given a chance to give a permit also? **Mrs. Gehrlein** said, so I can take a stab at that. We were making design decisions to the plans, and I was asking for, you know, different configurations to the kitchen, and here and there, and things like that. So, I think, you know, a lot of that was really just my requests. Mr. Kinney began coughing and was muted. Mrs. Gehrlein continued, really we did ask Josh to prepare just one set of drawings, just to have for ease of reference. It wasn't to avoid the phased approach. You know, it was just for ease of reference on the site, and to make sure that things would add up between the phased approaches. We were just excited to see the construction continue and I really, we really did not pause or think about it. I think we assumed that our experts and professionals were getting the approvals we needed. Everyone was on site. We are, we're remote here in Cleveland, so we weren't on site all the time. We just assumed everything was going according to code and to plan. So that is, you know, our fault there. Ms. Grentzer asked, and who's responsible for getting the building permit? Mrs. Gehrlein responded, Mr. Dearth, Tom Dearth. I think - I think. Is that correct Tom? **Mr. Dearth** responded yes. Ms. Grentzer asked, and why, Tom, did you not get it? Mr. Dearth said, well, actually, I was in the office, or Ottawa County office that day, getting the permit, when I got the call about getting shut down. The reason I waited because the plans were being changed and I wanted to go in there one time, and one time only, because otherwise I would have had to go back each time with a new revision of the drawings. But Tracy was aware of what was going on with the foundation and footers and things like that. But, yeah, like I say, I was in there that day getting the permits, filling out the application, when I got the call that we got shut down.

Ms. Roberts said, I have a, really a comment, to make. If this is turned down - and I don't know what the Board, you know, what everybody is going to do or what, I don't even know yet what I'm going to do. I listened to some of your neighbors say, you know, I hope the Board doesn't do this because. And I'm taken back by it because if the Board denies this, it isn't the board's issue. It's your issue. It's your contractor's issue. It's your architect's issue. Our job is to follow the law and to see where it goes. You're an attorney, you know that. That was the only comment I had. **Mrs. Gehrlein** said yeah, no, I think you're making a good point Mrs. Roberts. You know, we don't intend to lay blame on you. You're doing your job, and you're interpreting things as you see it. So, we appreciate that. Ms. Roberts said thank you.

Ms. Grentzer asked if there were any other questions? Mr. Shetler said, I have a question for Mr. Dearth. Did you have full permitting before you started the project? **Mr. Dearth** responded, no, I did not. The work that, you know, we were doing in the beginning right off the bat doesn't require a permit per se, to, you know, to do some things like tear the addition off in the back, which was granted, and doing the demo work on the inside of the house. But also, I would like to comment about the upstairs being it's, you know, with the 75% rule. I think there was made, comment made in a previous meeting with the beadboard walls being not structurally, and I think you see the pictures where the exterior walls had no interior finishes on them. The floors still remain intact, the ceiling remains intact.

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So, when we have to lift these up, we have to brace them so that they don't spread apart. And obviously, the beadboard walls are not structurally - they will not hold the house together and that was my primary reason. No excuse, but when we basically built a center partition to hold up the ceiling and braced the exterior walls to keep everything intact to keep it from spreading apart. The staircase is still there. You know, it's pretty much everything's there; we only, you know, I believe there's like three beadboard walls we took out. Mr. Shetler said so, I guess to extend that question, if you knew you needed to remove the bead wall, walls, to jack up the house, why wasn't that on your submittal? Mr. Dearth asked, on the submittal of what? Mr. Shetler said that was Exhibits 1 and 2, that basically showed things that were going to stay, and Kathy you can bring that up if you want. Ms. Dale said, so this is what they've submitted with this application, referring to Sheet D-1 on her screen. Mr. Shetler said, yeah, no, the prior one that we approved. Ms. Dale said the, so the Township Permit is Exhibit 2 and the drawing... Mr. Shetler said, I'm sorry, yes. Ms. Dale continued, the drawings with that showed no work to take place on the second floor, referring to Sheet A-2. Mr. Shetler said, yeah, so I guess my question is, if you knew you had to do that, I think that would have been part of your application or part of your drawings? Mr. Dearth said well, I didn't do the drawings, I mean, you know, so I mean, that wasn't um... Someone in Mr. Dearth's room said we didn't know that until we started getting into the house. Mr. Dearth said, so that is, that's one of those things that, I'm not trying to make excuses but you know, as you, as you get into this stuff, you know, you have to find, you find out things ahead; it's just impossible to find out some of these things ahead of time. So, you know, it was just one of those split decision things and I guess I was wrong. Ms. Bauer said, I feel like the owners are in this situation, because the builder, the architects aren't following through with Kathy at times when they need to. If you're unsure, you need to call her. Mr. Dearth said, and, and I agree, I'm not, I'm not disputing that. And I think Kathy will contested [confirm] this, that I call her several times asking her questions. As far as what I can and what I cannot do, what's allowed and what's not allowed. You know, I've been working in Lakeside for 30 years, I've never had, I've never been shut down for something, for any reason. I'm not a rule breaker. I don't try to be, you know, sometimes we do, do things that we probably shouldn't do, but it's for the safety of the home. You know, and, you know, and like I say, I constantly, you know, will talk to her about, you know, what can be done and what can't be done with the rules and things. Ms. Roberts said, um, you missed the call on this one. Mr. Dearth said, and I agree. I, you know, it's, you know, I'm not, I'm not trying to pass the buck. I'm not trying to pass the blame. It was one, I can say it was one of those split decision things. You know, and we did it. To you know, keep the integrity and structure of the house in good form.

The Chair asked if there were any more questions from the Board. There were none.

Ms. Dale said, alright, so, if at this time, we still have some people on to speak. Let's go to Rich Kelmer, who is on. Mr. Kelmer did submit an email to her on Monday, January 17, 2022. Ms. Dale read it into the record verbatim. Ms. Dale said that was what had been submitted to her to be included with the record and was entered as Kelmer Ex. 1. Ms. Dale said Mr. Kelmer is present and asked Mr. Kelmer if he could state his name and address if he would like to speak. **Mr. Kelmer** said, thank you so much. At this point, I think we would just stand by our submission, in the email. Ms. Dale said okay. Ms. Roberts said, Mr. Kelmer may I ask you a question? Ms. Dale said he will need to be sworn in. Ms. Roberts rephrased and said, Mr. Kelmer, are you open to me asking you a question? You would have to be sworn in then. Mr. Kelmer said um, yes, sure.

Mr. Rich Kelmer, 203 E. Second Street, Marblehead was called upon and sworn in. Ms. Roberts said thank you. Mr. Kelmer my question to you is, first of all, I appreciate your letter. And second of all, my question to you is who pressured you into supporting this variance? May I ask? Mr. Kelmer said, um, so we have received phone calls and emails from John Feick and from the Gehrlein's, as they stated, that they were reaching out to the neighborhoods, stating that they were interested in knowing what our position was with respect to not so much the variance, but whether we would challenge. Whether we would appeal the decision of the BZA. But along with that question came reminders 'And if we don't get this variance, you know, we, we might have to move our cottage right next to yours. We might have to shift the cottage, to the south'. So that, that was, that was the kind of pressure that we really didn't appreciate. Ms. Roberts said, I'm sorry that happened to you. Mr. Kelmer said, that's okay. We understand why it happened. We understand it, absolutely. Ms. Roberts said thank you for taking my question. I really appreciate it. Mr. Kelmer said sure. **Mrs. Gehrlein** asked, could we, could we respond to that? Ms. Dale said yes. Mrs. Gehrlein said, you know, Rich, we're sorry. We did not mean to pressure you. I think it was just the factual circumstance that we find ourselves in and we, we just wanted to make sure that you knew about it because we, we did not want to have to do that. So, we apologize if that was the way that was taken. Mr. Gehrlein said he agreed. Mr. Kelmer said, I understand, thank-you.

The Chair asked if there was any other testimony. Ms. Dale said yes. So, the next item I received is a letter that, or I guess it's a letter, that will go in as Ashmore Ex. 1. It was received yesterday from Mr. Feick. It is dated January 17, 2022, from Bruce Ashmore and Shelly Rappold at 182 Jasmine

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Avenue, Lakeside-Marblehead, Ohio 43440. Ms. Dale read the letter verbatim into the record. Ms. Dale concluded and said they are not present this evening, but that was a correspondence received by Mr. Feick. Ms. Roberts asked, was there a campaign out to address the residents? **Mr. Gehrlein** said, if I can address that, Ms. Roberts said, excuse me, and by whom? Or how many? Mr. Gehrlein said, I'd be happy to address that Ms. Roberts. It is the process that I described in my prepared comments where we attempted, yes to garner support, as part of that, to understand the positions of where we were at. There were no bribes, no threats, no, no anything. Did we talk to Rich about if we were required to move the house? One way that we would be able to comply with Danbury zoning and retain compliance with the easement would be to move the house further south. So, we did talk about that point. It was, it was intended to try to just gain, you know, information that would be helpful for this committee's decision, thinking that if we had 5 neighbors and we understood their positions, it would just be helpful with the process. **Mrs. Gehrlein** said, yeah, and I think they were sent these materials too, just to be neighborly, to let them know why they were receiving it, and to also talk to them about it, was what we thought would be the best thing to do. And so, we just worked with John Feick for his assistance, so that no one would feel pressured, I guess, and that, we didn't intend to do that. **Mr. Gehrlein** said, just one clarification, we, I personally reached out just to the Kinney's and to the Kelmer's, because they are the people that we really personally know and are most impacted. We asked John Feick to contact the other Jasmine Street neighbors, which he did via text, and/or email, and/or phone calls. And I described, again, the contact. We didn't hear at all from one, we got this letter from the other and the direct backyard neighbors simply said, you know, John, you can characterize it by – I'm not stating anything here - but, you know, 'Hey, is anything changed with exterior design that would impact our, you know, view from the backyard?' The answer was 'no'. They said then 'Great, we wouldn't, you know, appeal anything. Ms. Roberts asked Mr. Feick, did you put out a letter to the neighbors also? **Mr. Feick** said, I called all the neighbors. Every one of them I left a voicemail on their phones and then I sent an email to all of them stating the same thing, that if they have any, this was coming up, if they had any questions that I could answer, they would let me know. Two of the neighbors got back to me directly and we talked about it. Yes. Kelmer's were not one of those neighbors. **Mr. Knobel** said if I'm still sworn.... Ms. Dale said no he was not; we would have to re-swear him in. Mr. Knobel continued and said, because I could shed some light on this if I'm sworn. Ms. Dale said, can we wait until it's your turn? Mr. Knobel said sure. Ms. Dale said okay, thank you. Ms. Grentzer said she wanted to ask why you had to contact Jasmine neighbors? Are they in the back? **Mr. Gehrlein** said yes, they're directly behind us. It was our understanding... Ms. Grentzer interrupted and asked how would they be affected? Mr. Gehrlein said we don't believe they are affected. Ms. Grentzer said, then why contact them? Mr. Gehrlein said, we were attempting to follow the rules, which as we understand them, were all adjacent neighbors were invited. They're actually included in the documents from the submission package. So we simply tried to address that. Ms. Grentzer said, okay, thank you.

Ms. Dale asked if there were any other questions regarding that? There were none.

Ms. Dale called upon Mr. Michael Brown and asked if he wished to speak. Mr. Brown stated he did not.

Ms. Dale called upon Dale Knobel. Mr. Dale Knobel stated his permanent address is 30617 Berry Creek Drive, Georgetown, Texas but his Lakeside address is 724 E. Sixth Street. Mr. Knobel was sworn in. **Mr. Knobel** stated, again, I'm speaking as the Chairperson of the Historic Preservation Design Review Board (HP-DRB) in Lakeside. I also happen to be the former Chair of the Lakeside Association Board. So, I have a 71-year history with Lakeside. Just to shed a little light on this question of contacted neighbors, we require that as part of the HP-DRB Certificate of Appropriateness process. And so, I think everybody, having done that, for the original submission to HP-DRB, it would be perfectly logical for them to reach out to exactly the same group of neighbors. So, I think that's probably how that occurred. Ms. Dale interrupted and asked, do you require them to send a pre-prepared letter referencing zoning variances and appealing the Board of Zoning Appeals decision? Mr. Knobel responded, no. No, our letter simply asked for comments on the plans and the application for Certificate of Appropriateness. Ms. Roberts asked, do you know if that was done? This time? Mr. Knobel said yes, yes, that was done. Ms. Roberts said, it was done? Mr. Knobel said, it was done, yes. Ms. Roberts said, not what you're saying, what Ms. Dale said. Was it done sending out - Kathy, you can reiterate it again. Ms. Dale said, I was just asking if the letters that, that his board requires to be sent out has anything to do with the Board of Zoning Appeals? Mr. Knobel said, they do not. I think my point was, I think it would just plant in the minds of the property owners that this would be the obvious way to go with any kind of issue involving the progress of the project. It's a surmise on my part, based upon that experience. Just real brief, as you know, HP-DRB concerns itself strictly with aesthetics and historic preservation. We don't, aren't experts in construction, nor in, nor do we concern ourselves with matters of interior design. But to that end, we would ask the Board to consider as it tries to decide whether there's a violation of ordinance that, the, any remedy not be worse than the disease. As you heard already, this is a particularly iconic block at Lakeside. There probably is no more photographed to block or used in

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Lakeside publications than this one. We are concerned about any movement of this structure that would bring it out of alignment with its neighbors and affect that 140-year-old vista, as well as the issues related to the parking easement that you heard earlier. We once again are extremely pleased with the materials that the Gehrlein family brought to us originally. This is an outstanding renovation project. We have many projects where you have to hold people's feet to the fire to get them to utilize historic materials and to repair rather than to replace, and the Gehrlein's stepped up to the plate on this one. So, we would hope that any cure is not worse than the disease. I also simply as a, I have spent 71, all or part of summers in Lakeside and resided in dozens of Lakeside cottages. And so, I think you do have to exercise care and figuring out what is, what is demolition, when you're dealing with these beadboard walls and often times open ceilings. It can be illusory. So just an observation based upon my experience. Thank you.

The Chair asked if there were any questions for Mr. Knobel. There were none.

Jim Switzer, Director of Lakeside Historic Preservation, Design review and Municipal Projects, 236 Walnut, Lakeside, Ohio was called upon and sworn in. Mr. Switzer said, thank you. A most recent case, probably just an hour old, I made a number of points. That set a precedent that I want to state might be a difference in this particular case. Not being a corner lot, being in line with all the other houses, being in the thick of the district where a majority of every Lakesider in the summer walks if not daily, at least once weekly. This more than any other street perhaps deserves to have its streetscape line of sights maintained. One of the things we do with the Historic Preservation Design Review Board (HP-DRB), and let me give Dale [Mr. Knobel] a few more plugs he didn't plug for himself. He's a Professor of History and PhD, President Emeritus at Denison University, a historian and preservationist. On our Board is a Master Degree Preservationist. When we review these properties, we also look not only to the character and to what's being altered, but to the impact as a contributor to the historic district. This house is identified as a contributor to the historic district. As soon as you move it back, you will remove it from its historic district contribution. This would be devastating to the overall character of the street. This is something that would be somewhat punitive to all of Lakeside. Lakeside owns the property under every home. You can view Lakeside as one big fenced-in piece of singular property. The reason that we all are here with zoning is that our rules also state that we support and follow all the zoning laws in Danbury Township. We've done that deliberately to help protect the building and codes following all State and Local codes, etc. When I brought up the examples for Lewis-Lyburger and LePage on the two streets in Lakeside as precedent from three years ago, 2018, four years ago now, having been a south to north move, I should have also mentioned that those were under a 75% demolition rule of Danbury that was related to the dollar value of replacement costs and not the square foot in area. So, your rules have an opportunity to be modified and changed over time, to better the uses and there may still be some tweaking needed there. But that's for you to decide. And as always, I state, we respect and look to your zoning, management's, to help guide us. One of the key issues, difference between south to north moves is that it adds a spacing between the cottages that add a great value to Lakeside. That adds distance for fire protection. Moving east to west or west to east has no bearing on fire protection. It only impacts the street view. This case in an 1890 home, 132 years in nonconformance, about 100; about 90 of those [years] not even knowing it was a nonconforming structure until laws came about to create "L" District setbacks. Put a house that has ever had those setback rules for 75% of its lifetime, today in jeopardy. And so, I continue to say please, please adhere, listen to the true impact this will have on this street to the character and heritage of Lakeside in one of the most iconic areas of all of Lakeside. In this particular case, from HP-DRB, Historic Preservation Design Review Board perspective, 100% of the roof, other than the addition, which was known and approved, and 100% of the walls other than the front porch and the addition were removed. No demolition from Lakeside's definitions were impacted. Kathy and I have talked about, in a number of different ways, trying to align your definition of demolition to our definition of demolition. Our definition of demolition ties back to the historic district, the contributors, the exterior view, the character of the structure, the style of the structure, and more specifically, the facade and the facade you change. As opposed to what happens on the inside of a cottage. We really promote 21st Century needs of the cottage owners and what they might need today. As you can look back into our leases, and this leasehold that this sets on, it states things like our quarterly assessments are for sanitation. And when that was written, sanitation meant picking up horse manure off of the pathway. There are no dedicated roads in Lakeside. Danbury will not plow our streets, they don't own them, they don't have to pave them, they don't have to do anything. We didn't arbitrarily put our road right-of-ways in place, we put them in purposefully, so that we, Lakeside, could control the use of our property and our roads. We again also then included Danbury zoning in our rules because we recognize the strength of how you impact the safety and well-being of those cottages as we move forward in modern times, modern materials, modern built styles and methods that didn't exist when these cottages were built. Having said all that, I hope that you see that there is some difference in this example versus the last, in that this would be a truly impactful and devastating decision to move this cottage back 6'7". Finally, within your own rules and

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decision standards, not approving this variance would absolutely change the central character of this neighborhood. As you point out, in 7.8.2.C.i.c. Please give that good consideration. No further comments, Kathy. Ms. Roberts spoke up and asked if she may. Jim, I have a question for you. And don't you ever get angry at the owners, and the architects, and the builders that cause these problems? Where you have to sit and try to defend it? And it's a rhetorical question, I'm not asking for an answer. Mr. Switzer said, you answered it yourself. It's a rhetorical question. God bless you. Did I answer that right for you? Ms. Roberts said, thanks a bunch. I told you I had the utmost respect for you. Chuckling, she said good going.

The Chair asked Ms. Dale if there were any others on to testify. Ms. Dale said, I want to clarify. So, Jim had submitted to me the Municipal Services Deviation Request Application that's going to go in as Lakeside Ex. 1. It was received January 11, 2022. I think the key, Jim correct me if I'm wrong, you just basically stated what this state's in regards to maintaining the alignment of the structures to the street, is that correct? Mr. Switzer said, that is correct. But we call it the streetscape view. Yeah. Ms. Dale said, okay, but nonetheless you typically supply this, if it is produced after an application is received. So, you are submitting it again. Mr. Switzer said, excellent question. We don't normally, this is an unusual situation, but it is a variance, it's a setback variance request by a cottage owner. So, this, we, I have stated this in the past, we do not have authority over Danbury zoning and we don't presume to. But what we do with this process, when we send these out, is demonstrate to you that this is the voice of Association Board supporting the requests that the Gehrlein's have for the variance requests. Jane Marx is the Vice-Chair of the Board, but she's Chairman of the Municipal Services Committee, and throwing the full support of the Lakeside Association Board behind this variance request. Ms. Grentzer said she had a question Mr. Switzer. You've been before the Board multiple times in favor of the applicants, the appellants, making the changes in all of these houses that are 100 years old or more. Have you ever thought that maybe there shouldn't be so many changes, since you want to maintain all of this historic value? Mr. Switzer responded, I'll tell you that if you haven't seen me before here, but there was a Lakeside case, it's because I don't bring junk to you. This whole process has been going on for months to get approvals from HP-DRB. HP-DRB ensures that the changes are complementary to the characteristic of Lakeside and in line with trying to preserve the contribution value to the historic district that some of these cottages have. If Dale [Mr. Knobel] doesn't mind me throwing him a bit under the bus. His own cottage is not a contributor to Lakeside, and he'll freely admit that. He's got a very modern cottage, not every cottage in Lakeside fits that bill. What I will tell you is, that my own cottage renovation, when I did my 1,300s.f. addition, I took off all of the siding, and all the Celotex Styrofoam crap down to the studs on the exterior. Certainly 100% demolition from your standpoint, but it was within six-tenths of an inch of being in conformance. To me, that's the difference. Ms. Grentzer asked, have you ever turned many down or any down? Talking over each other, inaudible. Mr. Switzer said, well, it's awkward because on this same call are people that I told you I didn't bring any support from the Lakeside Board for a call just two months ago. But I happen to be on the call and you're all looking at me like, 'Well, why isn't Switzer talking?' So, I just kind of said, 'Well, we just we don't have any skin in that game'. So, we're not saying 'yea' or 'nay' on it. So yes, I have.

Ms. Grentzer asked if there was anyone else. Ms. Dale said there's no further exhibits to enter into the record. There is no one else on that we haven't already addressed. So, I guess at this point, we can follow-up with any questions of everybody that's been on.

Mr. Shetler said he had a question for Mr. Feick. John, and in your years of being an architect, how many projects, estimated, have you done in Lakeside? **Mr. Feick** responded; I think there was seven last year. We've got four for next year. There were probably three, four the year before. We've probably been averaging four to five a year. Mr. Shetler said, so, along that, you would be very familiar with this 75% modification. Mr. Feick said, we've never up until this one, never exceeded that. So we've never had to, I guess like this one, we had to do it in phases to make it work. But previous to that, we've per Lakeside's demolition, have been more, but not per Danbury's definition have we had, exceeded the 75%. Mr. Shetler asked, so that means that you were well aware of that part of the zoning? Mr. Feick said, I'm well aware of it. I don't agree with it. I don't think it's correct. But the solution for us is to bring it to you, state our case that we disagree with it. And whether or not you agree or not, it's, it's a different hearing. And if, you know, the other, if it gets turned down, if the homeowner is so inclined, they can take it to court, which is, again, it's painful for everybody. I'm not talking just money, but it's just the time and the effort and what you have to do. You know, it's not my job to, and we don't like to be, we want to be, work with, I mean we try to work with Lakeside as much as we can, because they're the first people we have to deal with. And Danbury is number two, and I don't want to make Kathy mad on this project, and then bring another one next week, because I've got another one coming next week, and then have to deal with it again. I don't want hard feelings between all of us, we try, are trying to make things work well. This one, Kathy gave us a good way around it. And it was working, up until a point. And then, you know, because of either bad communications with the field people or whatever, more work presumably got done, but in reality, it really isn't. Work, work; I guess it's basically how

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you define things. I'd say I don't agree that the beadboard petitions upstairs was structural, so I don't really look at it as demolition. But its, that's how Kathy defines it. You know, we're not in a positioned today to say, hey, we don't agree, because I guess that's a fight for a different day. Ms. Grentzer said, Mr. Feick, that 75% rule, which is Danbury's rule on law; It may be comparable, you don't like it, you don't agree with it, but you follow it correct? Mr. Feick responded, we try to, yes. Ms. Grentzer said, because I don't like the roundabouts that the State builds, but I have to abide by them, because that's the law. So therefore, you would abide by the 75% rule also, correct? Mr. Feick said, when we set this project up, based on the discussions with Kathy, we set it up in two phases. And our office prepared drawings for phase one and submitted them to Mr. Dearth for a building permit, for phase one. Jim Switzer and I, we've talked about this in the past, most of the jobs I'm hired for is, I get the project, I take it through design review, get it approved there, I take it to Danbury to get a zoning permit, and then I'm done. If they take over, everything's given to the contractor. There's a reason why people hire people like Tom Dearth, they're very thorough. They do good work. They trust them, they believe in them. And because of that, they don't need my services to watch him pound nails. So, you know, my work was done. So, you know, I'm not here, you know, everyday watching Tom work. I wasn't asked to. So, we were not aware of what was going on. But I can only tell you that the job was set up properly to start with, based on conversations we had with Kathy.

The Chair asked if there were any other questions or comments. Mr. Shetler said he had one last one for Andrew and Jennifer. Who did you trust to drive the bus on these decisions for you? Mrs. Gehrlein asked if he could clarify. Mr. Shetler said based on, you know, what Mr. Feick just relayed to us and testified. Who did you rely on for these critical decisions for you? Mr. Feick, or Mr. Dearth? **Mr. Gehrlein** said, I mean, I think I would characterize it as John said, it was a phased approach. You know, they worked together up to a certain point. Then there's a handoff when construction begins. You know, ultimately, we are responsible, you know, we talk frequently with and try to get status checks on where things are at. So, ultimately, I'd say, I guess we are responsible, and I think John did a good job of characterizing the process. Mr. Shetler said, one last question then was, did they did they make you aware of the 75%? Did Mr. Dearth make you aware of it? Mr. Gehrlein said we were aware of the phased approach, yes. Mr. Shetler said, okay. Thank you. Mr. Gehrlein said, if I could just add to that, Mr. Shetler, we were aware of the phased approach and did not believe that we were in violation of the phased approach, you know, as we've attempted to state throughout the discussion here. Mr. Shetler said thank you.

The Chair asked if anyone else had any questions. Ms. Dale said she had a couple of questions if they didn't mind. She said, this may be for Mr. Kinney since he spoke about the easement. Is the easement, like clearly identified on the property? Is there like a different material? And maybe the maybe the Gehrlein's can answer this too? Is there something that identifies the location of the easement on the property? **Mr. Gehrlein** said he would attempt to answer, and then Dick and Herb, please go in. There are no stakes in the ground. There are no specific property lines. It is very well documented and described on the easement documents, on our title, on all the architectural drawings that were submitted to HP-DRB, to Danbury, it's on all of those documents. There's a general understanding of, you know, it's five feet into each of our backyards, basically straight back until the Kinney's existing garage is there. And it's designed exactly as Dick described to facilitate, you know, you pull your car in forward, you can park in the back yard, you can reverse into the easements and then go, you know, pull straight out. So, we've always had, you know, we've owned the home for three years, nowhere near the time that the Kinney's have, but we've always had an understanding with the Kinney's when they are there, with renters, we rent our home, Kinney's rent their home, we've described, you know, the requirements of the easement to all parties because as Dick described, it is very valuable to both homes to have that space for pulling in and pulling out. Ms. Dale said, so I, where I'm kind of going with this, where I'm going with this in my mind; if it's not clearly delineated, if you needed to use more space within either of your backyards, beyond the defined boundary, are you able to do that? Mr. Gehrlein asked Ms. Dale to pull up the drawing of the easement to help facilitate the discussion. Ms. Dale pulled it up on her shared screen (page 37 of the packet & part of Applicant's Ex. 1). Mr. Gehrlein continued, so the hash-marked area depicts the shared driveway and that is the space on the north and south ends of the shared driveway, which as you can see, is approximately 5' by approximately 28'. So, both parties know that. Both parties, you know, you can - you know it by feel. By where there is space to move your car. As you can see, if we were to move the home directly to the east on that same line, it would be very difficult for let's say, the Kinney's to pull down the driveway, turn north into their backyard, and then when they are ready to pull out, you know, reverse south, go further east to straighten out. They would, you know, be in danger of hitting the corner of the house if we were to go directly back to the east. As part of our plans, there was discussion of the garage. So, we have added a small, one-car garage approximately in-line with the Kinney's existing garage, which will make the spacing in the back yard even more tight and constrained, and challenging to turn around in. Again, supporting the value of easement. **Mrs. Gehrlein** said, this was something that one of the Kinney legacy owners paid the Covey's for, a certain

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amount and it was recorded on the deed. Ms. Dales said, okay, but, so there's not a hard definition of this space. You haven't really answered my question on whether you could go beyond the limits of this if you needed to, within reason. Ms. Gehrlein said, well, so we, neither party has the right to do that. I guess the other neighbor could say no. Ms. Dale said, okay. Mrs. Gehrlein continued, this is only, this is the area that is allowed for joint use. You can see the ownership line. Actually, our property owns most of that driveway. Ms. Dale said, correct. Ms. Gehrlein said, our legacy owners were paid a certain amount. I don't know what that amount was back in the day. And so, this is what was agreed to by the parties. So, you know, technically not, but, you know, the easement would have to be amended, if we wanted to, you know, violate that agreement between the two parties. Ms. Dale said, okay. But that would be between the two parties and not; has nothing to do with the Township per se being involved with that. Ms. Gehrlein said, yeah, I don't know that Mrs. Dale, for sure. I'm not a real estate attorney and we have not looked into this. I don't know. I'm not sure. I can't advise to that. Ms. Dale, said, so last question. Kenton Row, there are typically reserved parking spots across the way along Bettinger Park. Do you have a reserved parking spot over there? Do you have a reserved parking spot in front of your house? Ms. Gehrlein said, we do. Mr. Gehrlein said we do in front of our house. We do not across the street and down, where the spaces are. Just in front of our house. Ms. Dale asked, do the Kinney's have a reserved parking spot across the way? Do you know? And maybe they can speak to that? Mrs. Gehrlein said, I don't think they do. I don't know if Dick and Herb are still on, but I do not think they do. Ms. Dale said Herb just raised his hand. Herb did you want to respond to that? **Mr. H. Kinney** said, actually Dick should be the one responding, but we do have a reserved spot in front of our cottage, but we always have more than one car when our family is there. And there is no good parking for the public. Down around the park is always full or taken up by other reserved places. Parking is at an extreme premium in that location. Furthermore, I don't, I'm – Dick's an attorney, not me. But if the town of Danbury forced encroachment into the easement by forcing the Gehrlein's to move their house into our easement, then they would be a party to the violation of the easement, I believe. I'm not an attorney saying that, but I think that would probably be the case. But you asked about this definition of the easement. No, we don't have stakes out there and we don't have lines drawn, etc., etc. But we've always had good relationships with our neighbors. If we had neighbors that were creating problems on use of the easement, oh, yeah, we'd mark it. But we've always had good relationships with our neighbors, and we have good relationships with Gehrlein's. As I said, they are the kind of people that we've always enjoyed in Lakeside. Ms. Dale asked, can either one of you clarify then for me, basically this easement is for access to your garages, the ability to turn around, but it's not supposed to be used to be parked on and it cannot be obstructed. Did I understand that correctly? Mrs. Gehrlein said that's correct. **Mr. H. Kinney** said, you cannot park on the easement. But you can park on the rest of the backyard area, off the easement. **Mr. Gehrlein** said, you can also not park in the driveway since it is a shared driveway. We can't block either party, so your only choice is to pull into and park in the backyards of the respective homes. Ms. Dale said, or your garages. Mrs. Gehrlein said, yes. Ms. Dale said, or your reserved parking spaces that you have. Mrs. Gehrlein said, in front of the house. Yes. Ms. Dale said, okay, Thank you. I just wanted to kind of have clarification on all that. **Mr. H. Kinney** said, one thing, our garage has not been used for parked cars in the 65 years we've owned our cottage. We keep a couple of [inaudible] there, maintenance materials in there. We keep other bicycles and stuff in there. Even when we park cars, cars are parked [inaudible] we've been doing that for 65 years. Ms. Dale said, that's all I had. Thank you.

The Chair asked if there were any other questions. There were none.

Mr. Fetzer made a motion to close the public comment segment of the hearing, seconded by Ms. Roberts. All were in favor and the motion carried.

Mr. Shetler motioned to recess into executive session to deliberate the merits of the case. Ms. Bauer seconded the motion, and the roll call vote was as follows: Mr. Shetler – yes; Mr. Fetzer – yes Ms. Roberts – yes; Ms. Bauer – yes; Ms. Grentzer – yes. The motion carried and the Board recessed at 10:37p.m.

Mr. Fetzer moved, and Mr. Shetler seconded the motion to reconvene. The roll call vote was as follows: Mr. Shetler – yes; Mr. Fetzer – yes Ms. Roberts – yes; Ms. Bauer – yes; Ms. Grentzer – yes. The Board reconvened at 11:34p.m.

The Chair asked Ms. Dale to read the Findings of Fact for BZA Case #2022-005:

With regard to BZA-2022-005 being a request for an Area Variance from Section 7.12.C to allow more than 75% of a nonconforming structures floor area to be structurally altered and restored (100% proposed) for the property located at 177 Kenton Row:

1. The property in question **will** yield a reasonable return and **can** be used beneficially without the variance because the property can be used for a single-family residence. The property is of ample size to allow for a structure to conform to the zoning district regulations whether the

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original house remains or not, is moved or modified. The highest and best use of the property is a single-family home.

2. The request **is** substantial because the nonconforming structure is prolonged if the variance is approved, and the structure will not become more conforming in any way.
3. The essential character of the neighborhood **would not** be substantially altered by the variance and adjoining properties **would not** suffer a substantial detriment as a result of the variance because a major project addition was already approved without moving the house and nothing changes in regards to the placement of the structure on the property with this additional variance request.
4. There is **no** indication the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because all utilities are available to the property and will have to be reinstalled to the regulating agencies standards.
5. The property owner states they **were not** aware of the zoning restrictions at the time they purchased the property, however, the property owner and their architect and contractor **were aware** of the zoning restriction at the time they were preparing the plans for the improvements to the structure, prior to applying for the zoning permit.
6. The property owner's predicament **could have** feasibly been obviated through some method other than a variance by following the drawings approved. The property owner's predicament **can** be feasibly obviated through some method other than a variance by removing the house and building all new, bringing the house into compliance by either removing the front 5' of the structure or by moving the structure on the property. The house is currently lifted off the foundation and in a position to be moved into compliance. The applicants created their own hardship by voluntarily modifying the structure in a manner that required compliance with zoning requirements.
7. The spirit and intent of zoning **would not** be observed, and substantial justice done by granting the variance because the owner wants the protection of nonconforming status to apply to new construction. In addition, any practical difficulty alleged was self-created.

Mr. Shetler moved that the Board adopts and makes the findings of fact as read by the recording secretary and that after considering and weighing these factors, the Board finds that Decision Standards(s) (2) (5) (6) (7) weigh more heavily to show that:

- a. Practical difficulty **is not** sufficient to warrant granting the Variance requested.
- b. There **is not** a preponderance of reliable, probative and substantial testimony; and
- c. There is evidence that **does not** support the applicants request for a variance.

Therefore, the Variance should be accordingly **DENIED**.

Motion Seconded by Ms. Roberts. Roll Call Vote was as follows: Mr. Shetler – yes; Mr. Fetzer – no; Ms. Bauer – No; Ms. Roberts – yes; Ms. Grentzer – yes. Vote 3-2 the motion passed. The Chair stated that the application has been denied. Ms. Dale stated that those in attendance for this hearing were free to leave the meeting, or they were welcome to stay on for the Board's next order of business. Ms. Dale said she would be in touch with the applicants later this week.

Approval of December 15, 2021, Board of Zoning Appeals Meeting Minutes

Mr. Fetzer made a motion to approve the December 15, 2021, meeting minutes as presented. Ms. Roberts seconded the motion. All were in favor, motion carried.

Signing of Decision Sheets

The Chair asked if the Board had the opportunity to review the Decision Sheets presented for the following cases. Mr. Fetzer motioned for approval of the decision sheets as presented. Mr. Shetler seconded. All were in favor and the motion carried.

- a. **BZA-2021-267 5677 E. Bayshore Road.** Request for a Conditional Use in accordance with Section 3.5 & 4.2 to permit the use of the structure as a Bed & Breakfast. **Daniel J. Jadwisiak, Owner; John & Carrie Tucholski, Agents/ Applicants.**
- b. **BZA-2021-269 2149 Willow Cove.** Request for an Area Variance from Section 5.1.7 to allow for a new house to connect to an existing garage with a 4' east, rear-yard setback where 5' is required and to Section 3.5 to allow more lot coverage than permitted (43.8% proposed/ 40% required). **David Wyderka & Mary Ann Pressler, Owner/ Applicant.**

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- c. **BZA-2021-270 423 Maple Avenue.** Request for an Area Variance from Section 3.5. to allow for an addition onto the existing house to encroach into the north, side-yard setback (2' proposed/ 3' required). **George & Diann Tyler, Owners/Applicants.**

Old Business

Ms. Bauer indicated that she would not be comfortable as the Vice-Chair and conducting the meeting and asked for a reconsideration of the position on the Board.

Vice Chair: Ms. Roberts made a motion for Mr. Shetler to be VP. Mr. Fetzer 2nd. Vote: All Ayes

Ms. Roberts asked if a new Secretary would need to be selected since she thought they had elected Mr. Shetler to the Secretary position at their last meeting. Ms. Dale said yes. Ms. Roberts asked if Ms. Bauer could serve in that position. Ms. Dale said no because she just came from that position and met her two-year limit. Ms. Dale said that it would have to be Ms. Roberts or Mr. Fetzer to be selected for the Secretary position.

Secretary: Mr. Fetzer made a motion for Ms. Roberts to be Secretary. Mr. Shetler 2nd. Vote: All Ayes

New Business

Ms. Dale stated Mr. Shetler was reappointed by the Board of Trustees to serve another 5-year term and that he needed to be sworn-in. Ms. Dale swore Mr. Shetler in and asked him to sign the Oath sheet she would email to him and for him to return it to her.

Other Business

There was none.

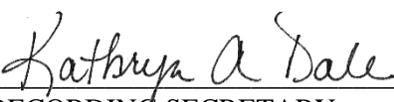
Reports and Communications from Members and Staff

There was none.

Adjournment

Mr. Shetler moved to adjourn the meeting and Mr. Fetzer seconded the motion. All in attendance were in favor and the motion carried.

The meeting was adjourned at 11:49p.m.



 RECORDING SECRETARY

<i>Loretta Grentzer</i>	dotloop verified 02/16/22 7:42 PM EST D5JV-PPYF-2CEV-TIB7
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<i>Lisa Bauer</i>	dotloop verified 02/16/22 7:32 PM EST VQJ5-YUXW-NIFB-9HZI
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<i>Joseph Fetzer</i>	dotloop verified 02/16/22 8:37 PM EST WTAT-ALRS-XJKL-EGOP
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<i>Clyde Shetler</i>	dotloop verified 02/16/22 7:39 PM EST QTLE-TG7W-A4J5-HVEG
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<i>Sherry Roberts</i>	dotloop verified 02/16/22 8:42 PM EST 7ZUB-XEOT-EDZ2-CARX
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