

RECORD OF PROCEEDINGS
Danbury Township Board of Zoning Appeals

Minutes of

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

April 20, 2016

The Danbury Township Board of Zoning Appeals was called to order at 6:30 p.m. by Chair, Carol Robertson, at the Danbury Township Hall. The Pledge of Allegiance was recited. The roll call showed the following present: Mrs. Carol Robertson, Mrs. Loretta Grentzer, Mr. Brad Bauer, Ms. Sherry Roberts, Mr. John William Smith, and Alternates Joseph Fetzer and Sharon Michael were excused. Also present were Kathryn Dale, Zoning & Planning Administrator, Cheryl Harmsen, Administrative & Zoning Assistant, Jeffrey Stopar, Township Legal Counsel, and Marie Fresch, Court Reporter. Visitors present were Peter Corrado, Bill Brown, Bree Brown, George Wilber, Esq., Dr. Alice Randolph, Michael Wright, Linda Neura, Cindy Kaple, Jim Babiasz, Holly Jones, Becky Kerzee, and Mary Ann Behlke.

Ms. Dale read the rules of order for the meeting proceedings.

Ms. Dale asked Mrs. Harmsen 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. Harmsen to introduce the first case of the evening.

Adjudication Hearing
Case BZA #2016-011
5401 Maritime Shoreway

Continuation from 02.17.16 and 03.18.16:

BZA-2016-011 5401 Maritime Shoreway. Request for a Conditional Use to allow for a 32 unit Condominium Development in accordance with Section 3.1.10.C.iii and Section 4.3. **West Harbor Marina, LLC (William Brown), Owner, Bree Brown, Agent.**

The Chair shared that the public hearing portion for this case was opened in February and closed at the previous meeting March 16, 2016. Members present were herself, Ms. Grentzer, Mr. Bauer and Mr. Fetzer. Ms. Roberts recused herself from this hearing and will do so again. Mr. Smith was not present at either of the prior meetings and will not be seated for remainder of this hearing. All those who spoke at either the February or March meeting are still under oath. All testimony provided at the February 17 and March 16, 2016 hearings, as well as exhibits, are carried over and still part of the record.

The hearing was continued per the request of the BZA to have time to review exhibits presented at the March meeting and that the Fire Chief be asked to attend or provide a written statement regarding testimony received from the applicant, members of the public and for clarification of his written statement and review of the request before us.

Chief Kahler, came forward and was sworn in.

Mr. Stopar asked Chief Kahler to state his name and position. Chief Kahler stated his name is Keith M. Kahler, and that he is the Fire Chief for Danbury Township since August 2014. Mr. Stopar asked what training and background he has as Fire Chief, Chief Kahler answering that he's been in the Fire Service for 36 years and been a certified fire inspector for over 25 years.

Mr. Stopar asked Chief Kahler if he was asked to review a site plan of this project, Chief Kahler answered yes. Mr. Stopar asked, if he had been requested to write a letter regarding this project dated February 17, 2016 and Chief Kahler answered yes. Mr. Stopar stated for the record, that letter is labeled Township Exhibit 3 and went on to ask Chief Kahler if it was a true and accurate copy of his report. Chief Kahler answered yes. Mr. Stopar asked Chief Kahler if he could remake that written statement as is under oath. Chief Kahler replied absolutely.

Mr. Stopar asked Chief Kahler to tell about what he's reviewed in this matter and what he concluded regarding fire safety and the project. Chief Kahler stated he met with Mr. Brown and his wife a couple of times and he had some issues with the fire lane in the initial plan. Unbeknown to him, he stated the initial plan did include part of the concrete bridge deck and since then, the plans have been revised to show a 20 foot fire lane that is what the code requires.

Mr. Stopar asked Chief Kahler what the issues are related to the 20 foot fire lane. Chief Kahler replied the bridge deck that is there now would not support the weight of a fire truck but Mr. Brown does have plans to change that. Mr. Stopar continued by asking Chief Kahler how he was basing his opinion on the concrete bridge currently not able to support a fire truck. Chief Kahler stated he is not a structural engineer, but the bridge supports are spaced about 25' apart and he does not believe it would support a 30 ton fire truck. Mr. Stopar stated he was done with his questioning.

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Mrs. Grentzer said the applicant has given the Chief from plans or some indication that he is going to make changes. When this new plan was shown to Chief Kahler was it in diagrams, in writing, and how is he going to ensure the change will happen during construction. Chief Kahler replied that Mr. Brown did submit a plan that was drawn up by Structural Engineer, John Burkin, although he didn't see any definitive plans on the project. Mrs. Grentzer asked when he saw these plans, were his concerns satisfied? Chief Kahler stated that if Mr. Brown follows through with the plan the Structural Engineer has drawn up, then he would be satisfied with the plan. Mrs. Grentzer stated there is no gate for the fire truck to get through, just a solid fence along the southwest side of the property and asked if this has been rectified as well. Chief Kahler replied, yes, his original plan was to come in through West Harbor Lagoons, and make a gate, but now, the restrooms facility will be moved, and the fire department will have direct access. Mrs. Grentzer asked if there is any problem with hydrant access in the new plan. Chief Kahler replied, it's no problem. Ms. Grentzer stated, so at this point you are totally satisfied with everything he is going to do related to fire access? Chief Kahler replied, provided he maintains the 20 feet fire lane, yes. Mr. Bauer asked, does that include the bridge? Chief Kahler replied, as long as it supports a 30 ton fire truck.

Sherry Roberts came forward and directed attention to the letter the Fire Chief wrote labeled Exhibit 3. The letter states there is no other access or turn around ability if one vehicle is parked there, how do you address this? Number two, if you look at the Ohio Fire Code 503.12, "Additional Access", it states, "the fire code official is authorized to require more than one fire apparatus access road based on the potential for impairment of a single road by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access". She stated there is no additional access, the question is, what are we going to do because there is no additional parking and if someone parks their car along the road and the fire truck cannot get access, what do we do in a fire situation? There is no parking space on the road behind these condos, and if someone parks their car in that area, the access would be limited. You can say they are not allowed to park there but what if someone does? Then you go to 503.2.5 "Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) in length shall be provided with an approved area for turning around fire apparatus". There is no turn around there. My question is, how do you get a fire truck in there and turn it around? You can back it up, but how do you turn it around if a car is parked there? If this plan was allowed to go forward, this puts the Township at risk, the condo occupants and the 52 or 53 boat owners. I would like answers to these questions.

Chief Kahler replied with regard to the turn around, Mr. Brown did just submit plans with a 34' area to be able to turn around a fire truck. It is not a cul-de-sac and the code does not say it has to be a cul-de-sac. In our parking lot, we've tested turning around a fire truck in this much space and it can be done.

Ms. Roberts replied, where are you going to turn around? Unfortunately boats are stored there currently and there is no space to turn a fire truck around. Chief Kahler replied, it's shown on his plan. Ms. Roberts asked which set of plans. Mr. Stopar asked Chief Kahler what set of plans he is referring to. Chief Kahler stated he first saw this plan in the hallway tonight before this meeting.

Mr. Stopar asked, for the record, Chief Kahler is this the first time you've seen these plans? Mr. Stopar asked Chief Kahler, if his testimony is based on these plans that he just saw in the last hour. Chief Kahler responded, no, when he first went out to the site, he measured the gravel area, and it was 29' wide like he stated in his letter. We went back to the fire station and measured 29' behind the fire station, and turned the fire truck around in the 29' area. This plan had no bearing on this situation. Ms. Roberts asked for clarification on the date of the plan stating because up to this point none of the plans have a date on them. Mr. Stopar stated he would check. Mr. Stopar stated to Chief Kahler that the letter was not based the plan you received today. Chief Kahler replied, correct. Mr. Stopar stated for the record, this plan will be labeled Fire Chief Exhibit 1, dated 4-20-16. Is that correct Chief Kahler? He answered that is correct. Mr. Stopar asked Chief Kahler, was the testimony you gave tonight based on this plan, and Chief Kahler answered no. Mr. Stopar clarified that the testimony he gave tonight is based on the site plan previously reviewed by Zoning. Chief Kahler answered that is correct. Mr. Stopar stated then the February 2016 letter is also based on the previous site plan. Chief Kahler answered yes.

Mr. Stopar asked Chief Kahler what impact this new plan has on his testimony given tonight. Chief Kahler stated the Fire Code states if there is 150' lane, there has to be a way to turn the firefighting apparatus around. We did that at the fire station in 1 minute and 10 seconds based on what is there now which is 29'. Mr. Stopar asked if this was this done with his staff and when. Chief Kahler answered yes and it was done last week. Mr. Stopar confirmed that that experiment was done without the benefit of the plan he received prior to the start of this meeting. Chief Kahler said yes. Mr. Stopar stated so that is the bases of your opinion tonight? Chief Kahler replied correct. Mr. Stopar asked Chief Kahler what impact this new plan has on your testimony given tonight. Chief Kahler answered this gives us more room to turn the truck around. Mr. Stopar asked if it changes the

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opinions in his letter. Chief Kahler said no, but he still has concerns about the fire lanes because if people are not parked in their garage, they are going to be in the fire lane. Mr. Stopar asked if the plan he saw today, which isn't under consideration by the Board, but does the new plan have any impact on this fire lane issue to correct those concerns. Chief Kahler answered no.

Ms. Roberts stated if a car is not parked in their garage and there is no designated parking for anyone, based on that, they have to park in their garage and also they are backing into a street. If a car is parked in the street, what are you going to do with the fire truck? Chief Kahler said it won't get through. Ms. Robertson stated that could happen anywhere. Chief Kahler agreed and said that is an enforcement issue not a fire code issue. Ms. Roberts replied this is different because condo owners don't have a driveway and they will be backing directly into the street from the garage. Mr. Stopar asked if there was any more cross examination.

Mr. Wilber stated, going back to the original plan filed with the application, have you seen this plan? Chief Kahler answered yes, a couple of weeks ago. Mr. Wilber stated, but that's not the plan you based your letter on a year ago. Mr. Wilber replied right, and added he signed a letter this year but also a year ago. Chief Kahler said he didn't remember writing a letter a year ago. Mr. Stopar asked if that is the letter that has the Fire Chief initials on it? Ms. Robertson stated the letter is dated February 17, 2016. Mr. Wilber agreed, and added, he signed a letter this year but also a year ago. Ms. Dale showed Chief Kahler & Mr. Wilber the concept plan that was submitted with the application and stated this is the plan he signed off on a year ago with his initials on it. Mr. Wilber stated, just to clarify one plan was submitted a year ago and is different than plan you reviewed in February. Mr. Kahler agreed. Mr. Wilber asked if the testimony tonight was based on the plan he saw in February. Chief Kahler answered yes. Mr. Wilber asked if any other plan had been presented to you since then? Chief Kahler answered no. Mr. Wilber stated, the plan you reviewed in February, you had some concerns. Chief Kahler answered yes. Mr. Wilber asked whether those concerns are addressed by this plan? Chief Kahler answered yes. Mr. Stopar asked Mr. Wilber to which plans he was referring? Mr. Wilber answered the February plan. Mr. Stopar added it is the plan this hearing is based on. Mr. Wilber, stated until you came in tonight, you had not seen a revised plan. Chief Kahler replied no. Mr. Wilber stated, so your testimony is based on some verbal comments made to Mr. Brown regarding room for the fire truck and access. Chief Kahler stated when he met with Mr. Brown, they went over the site and he told him he needed 20 feet wide and he was going to meet with the Corps of Engineers to discuss pilings and how to build up and support the bridge deck. As long as he met that, it would meet the requirements of a fire lane. Mr. Wilber stated, until you see that, you would not be able to affirm or certify it. Chief Kahler agreed. Mr. Wilber stated, whether he gets that permit or not, you don't know. Chief Kahler agreed and added he has no idea. Mr. Wilber stated, until you get that site plan, you have problems with the existing plan. Chief Kahler stated, yes and that he cannot approve the plan until they get the bridge deck done. Mr. Wilber stated, this plan is different than the original plan and you just received this plan tonight and it is dated April 18th, 2016. Chief Kahler agreed. Mr. Wilber stated, this plan is different than the previous plans. Chief Kahler stated yes, the restrooms have been removed and he has designated an area to turn around. Mr. Wilber asked if there is an access way along the far westerly side that shows more width to it. Chief Kahler replied it shows it on the plan but it is not there as of today. Chief Kahler went on to say he is not going to approve it until he stands on solid ground. Mr. Wilber stated, then also this plan is showing a cul-de-sac at the end of Maritime Shoreway and the original plan does not show that. Chief Kahler replied correct. Mrs. Grentzer asked if the plan that can handle the 30 ton weight, is the plan he saw just a few minutes ago? Chief Kahler replied no. Mr. Brown dropped off a plan from a Structural Engineer. Mr. Stopar asked Mr. Brown if he was going to submit that as an exhibit? Mr. Brown answered yes.

Mr. Stopar stated, with that being said and there are no further questions for this witness, we will deal with whatever that might be during the presentation. Ms. Roberts stated I thought this hearing was only to hear the Fire Chief's testimony and rebut. Mr. Stopar replied that is correct and any other evidence has to relate solely to the issues raised by this testimony.

Mrs. Brown came forward and gave the Board members copies of the Exhibits that have been discussed. She stated the first is Fire Chief Exhibit 1, the second is our first Exhibit tonight and that's the Engineer Report. Ms. Dale stated this is a continuation of the prior exhibit and will be labeled Applicant Exhibit D. This is a two page letter, with three structural drawings attached.

Mr. Brown stated he met with Engineer John Burkin since the last meeting, to discuss the bridge issue, and he came up with three different ways to deal with the extra weight of the fire truck on the bridge. First one is to just add steel to the top of the bridge and we would have no problem supporting a fire truck and everything is in the letter. Mrs. Brown added that's if you were required to drive the truck over the bridge. Mr. Brown answered correct. Ms. Brown continued by saying when you met with Chief Kahler, an option was to remove the restroom building, for the last phase, to allow the fire truck to pass on the gravel side and use the existing bridge deck for parking. The new drawing shows there is enough width on the gravel side to handle fire trucks where it would not have

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to use the bridge. Is that correct? Mr. Brown agreed and stated the bridge would be modified on the condominium side that the width would be 29', which is plenty of room for a fire lane and we added a turnaround at the end. Mrs. Brown stated that the new drawings show that the fire requirements are met and can be met. We didn't show the fire lanes before for the request of the Board.

Mrs. Grentzer asked if these pictures (Referring to Applicant Ex. D) of the deck from the side? Ms. Brown answered yes. Ms. Grentzer stated, these are the three options, how are you going to determine which option to choose? Mr. Brown stated, he would probably go with Option 1, because he would not have to drive more pilings and wouldn't have to get approval from the Army Corp of Engineers and would modify the bridge the way it exists and add to it. Ms. Grentzer asked if this is what you've shown the Fire Chief? Mr. Brown answered yes. Ms. Grentzer stated and this is what the Fire Chief has said is acceptable at this time? Mr. Brown replied yes. Mrs. Grentzer asked did he? Mr. Bauer asked about the encasement of the new piling. Mr. Brown answered with Option 1, it is not necessary to install more pilings just bridge it with steel. Mr. Bauer asked for explanation on Option 3. Mr. Brown stated that requires a decking with pouring reinforced concrete. Option 2 is box beams with asphalt. Mr. Brown stated these options are just so heavy, so they think Option 1 will be the best route to go.

Ms. Grentzer stated, in view of the concerns of the residents, have you taken into consideration any of the concerns of the neighboring property owners regarding noise? Maybe making modifications to address these concerns? Ms. Brown stated Danbury Zoning does not allow outdoor music at commercial venues, so we could not have that. Mrs. Grentzer stated another words, you're not thinking in terms of how you're going to satisfy any of their concerns. Ms. Brown replied, they believe that most of the concerns have been voiced over the commercial aspect of the property, which they are allowed to do right now. We are trying to restrict ourselves, get rid of some of the commercial aspect and making it more valuable, enhancing their properties and values also. We are trying to make it nicer. That is all we can say at this point.

Ms. Roberts came forward and asked the Fire Chief to confirm the hydrant is on a looped system asking for explanation of what a looped fire hydrant situation entails in terms of the pressure. Is the pressure as great at a non-looped vs. looped fire hydrant? Mr. Kahler replied that a fire hydrant works better on a looped system because the hydrant gets water from two directions and works better than a dead end hydrant. Ms. Roberts, stated, this is a dead end hydrant. Mr. Kahler answered, I don't know. Ms. Roberts asked what is the flow measurement of this hydrant? Mr. Kahler stated he would have to check. Mr. Stopar asked Ms. Roberts if she had any cross-examination for the Browns based on what they just presented. She stated her question is whether or not the noise...Mrs. Robertson stopped her and Mr. Stopar confirmed, the discussion is directly related tonight about fire.

Mr. Brown added that he will be installing at the end of this road, a dry hydrant that pulls lake water and there would be no limitations on how much water they will have access to.

Becky Kerzee came forward and was previously sworn in. Ms. Kerzee asked, in terms of safety, wouldn't that have to be inspected to say, yes this will handle the weight of a fire truck? Mr. Brown answered we will have an engineer do that. John Burkin will provide that. Ms. Kerzee stated but that is just a person with a job, I'm talking about a certified approval from the Army Corps of Engineers. Mr. Brown stated John Burkin is a Certified Engineer and will certify it can sustain the weight of a fire truck. Ms. Brown added, and the Fire Chief will consult with the Certified Engineer and certify whatever needs to be certified. Ms. Kerzee stated I thought you said previously that you had the Army Corp of Engineering approval? Ms. Brown replied that was misspoken, by not us, we had a private engineer review it.

Mrs. Robertson asked for a motion to recess into executive session for the purpose of deliberating the merits of the case. Ms. Grentzer made the motion.

Mr. Stopar interrupted to allow Mr. Wilber to speak. Mr. Wilber asked the Board, what plan are you going to consider when in Executive Session? Mr. Stopar addressed that by saying the one submitted tonight is an exhibit and not the plan they are evaluating to come to a decision to issue a Conditional Use permit. Mr. Wilber asked, then you are going by the original site plan without modifications? Mr. Stopar stated it is the plan submitted for the February meeting that was the basis of the Zoning Inspector Staff Report and discussed at the first two meetings. Mr. Wilber asked if there have been any modifications to that plan that we have not seen? Ms. Dale answered there are no new plans or applications submitted only exhibits.

Mr. Bauer seconded the motion and the roll call vote was as follows: Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes. The motion carried and the Board recessed at 7:14 pm.

Mr. Bauer moved and Mrs. Grentzer seconded the motion to reconvene. The roll call vote was as follows: Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes. The motion carried and the Board reconvened at 9:09 pm.

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The Chair asked Mr. Harmsen to read the findings for this case.

With regard to Case # BZA-2016-011, being a request for a Conditional Use to allow for a 32 unit Condominium Development in accordance with Section 3.1.10.C.iii and Section 4.3, located at 5401 Maritime Shoreway (PIN # 0141133915182001):

1. The Conditional Use **will** be harmonious with and in accordance with the **general** objectives of the Danbury Township land use plan because the plan on page 12-13 calls for “undeveloped land that adjoins developed land, attain a blend of business and residential activities that enhance the day to day life of the residents and businesses and make the community more attractive for everyone.”
2. The Conditional Use **will** be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use **will not** change the essential character of the same area because there are a variety of housing styles to the north, south and east of this site.
3. The Conditional Use **will not** be hazardous or disturbing to existing or future neighboring uses because the proposed Condominium Development is below the permitted density and adjacent to other high density housing.
4. The Conditional Use **will not** be detrimental to property in the immediate vicinity or to the community as a whole because the proposed Condominium Development is below the permitted density and adjacent to other high density housing.
5. The Conditional Use **will not** be served adequately by public facility and services based on the concerns of what the Danbury Township Fire Chief expressed in his report dated February 17, 2016.
6. The Conditional Use **will** have vehicular approaches to the property which **will not** be designated so as **not to create** an interference with traffic on surrounding public/private streets or roads.
7. The granting of the application is **not** necessary for the preservation and enjoyment of a substantial property right and not merely to serve a convenience to the applicant.
8. The authorization of the Conditional Use **will** increase the danger of fire or imperil and the public safety because of the concerns of the Danbury Township Fire Chief expressed in his report dated February 17, 2016.
9. In addition, the applicants have failed to carry-out their burden of proof to demonstrate that they are entitled to a Conditional Use permit. Specifically, there is significant documentary and testimonial evidence regarding a cul-de-sac and easements that have not been shown on the plan filed on January 29, 2016, that have an effect on the design and layout of the buildings on the property and will affect the parking requirements that should be presented to this Board to ensure all zoning requirements of the Conditional Use and underlying zoning are satisfied prior to approving a Conditional Use Permit.

Mr. Bauer moved that the Board adopts the findings of fact as read by the Recording Secretary and further moved that the Board has given due regard to the Conditional Use criteria of Section 6.2.2 of the Danbury Township Zoning Resolution and after considering and weighing these factors, the Board finds that Decision Standards(s) (5) (8) (9) weigh far more heavily to show that: there **is not** a preponderance of reliable, probative and substantial testimony and evidence that **supports** the applicants request for the Conditional Use. Therefore, the requests should be accordingly **DENIED**.

Motion Seconded by Mrs. Grentzer.

Roll Call Vote was as follows: Ms. Grentzer – yes; Mr. Bauer – yes; Ms. Robertson – yes.
Motion Denied.

The Board took a brief recess to allow the room to clear out.

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The second case of the evening was announced by Mrs. Harmsen.

Adjudication Hearing
Case BZA #2016-034
8098 Rollie

BZA-2016-034 8098 Rollie. Request for Area Variance from Section 3.5.7 to allow a storage shed addition onto the existing house to encroach into the west, 5' required side-yard setback (10" proposed). Peter & Linda Neura, Appellant/Owner.

The Chair asked that the record shows Ms. Roberts & Mr. Smith will be seated for the remaining cases on the agenda and asked if there were any Board members who would have a conflict and wished to abstain from this hearing, there were none. Mr. Bauer moved and Mr. Smith 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 the application. Ms. Dale explained that this same request had a hearing in February which ultimately resulted in a tie vote at the time of the signing of the decision sheets, thus it was placed back on the agenda as a new case since some members were not present for the hearing in February. The application is for a 5' x 16' storage room/shed onto the west side of the existing house which will only be ten (10") inches from the side property line where 5' is required. The storage room has already been constructed and was noticed while out on inspections. According to the Appellants narrative statement, they have a medically necessary handicap ramp that has been installed inside the garage to gain access into the home. As a result of the installation of that ramp, much of their storage area was disrupted and items that had been in the garage needed a place to go. They were unaware of the zoning requirements and constructed the storage room addition without the proper permits. As a result of the property being a corner lot, and the house takes up much of the buildable area, the location for any type of storage area is very limited, to nearly non-existent. Ms. Dale shared that the neighbor to the west contacted her and stated they are not opposed to the shed addition. She shared that their biggest concern was that the shed did not cross the property line and since it does not, they have no objection.

Linda Neura, 8098 Rollie came forward and sworn in and attested that the paperwork the Board received was what he submitted to the Board. Ms. Neura thanked the Board for having her back. She described the size of the lot and how there is really no other location to be able to place such a structure. She stated that her & her husband have lived in the house the last 20 years and have had no need for a shed until the last year, when her husband was sent home in a wheelchair after some medical issues because he is unable to walk. A friend put a ramp in the garage for them, but that then pushed everything to one side of the garage. When she attempted to bring the car into the garage, the car was right up against the ramp, which made it very difficult then to get him in and out because she would have to back the car half way out to be able to maneuver him in the wheelchair. So, they're son and a friend built the shed to be able to move items out of the garage to make room for the car. She stated that the day the shed was finished, took everything he could from the garage like yard tools, fishing gear, doors that were removed in the house to accommodate the wheelchair and placed them out in the shed and the shed is pretty full. Ms. Neura said that she can now get the car over far enough so when her husband comes down the ramp, he can maneuver on the garage floor to get over to the car. She said they do have a golf cart in the garage and described how they park it in there. She said that is what he uses to go get the mail and take their dog out for a walk. She said she would appreciate it if they would approve her request.

Mr. Smith asked why the ramp was put into the garage if they knew it would be a problem for all the other items. Ms. Neura stated that she didn't realize it was going to be a problem, but the only door feasible for them to use was the one from the garage into the house. Mr. Smith asked if that was because the front door wasn't wide enough. Ms. Neura said no, that the front door was wide enough, but where it is located at is the opposite end of the house from the garage. She said if it was put here, she is not capable of shoveling or clearing it off in the winter. Mr. Smith asked if she was saying protecting it from weather was the primary reason the ramp was located in the garage. Ms. Neura said that, the distance and the front door was much higher than the back door leading in through the garage, so the ramp was able to be shorter going through the garage because it didn't need to get up as high into the house.

Mr. Smith said his next question is whether they considered renting a storage unit. She said to be honest with the Board, they are low-income and can't afford a unit. Mr. Smith asked if this is a dead storage area, another words, they do not or will not routinely move things in and out of it. She said the only thing they have moved in and out of it since her son filled it was a snow shovel. They placed the yard tools near the door for ease of access to those when they need them. Mr. Smith

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confirmed then that it is not an active storage space. She said no. Mr. Smith asked if it had electricity to it. Ms. Neura said no, they added a little window for some natural light.

Ms. Grentzer asked if they use it to store lawn equipment in and Ms. Neura said yes. Ms. Neura explained that it included a rack with all the rakes and equipment like that. Mr. Smith asked if there were a set of doors at each end and Ms. Neura said yes.

Ms. Roberts asked how it came to light that the shed even existed since they didn't have a permit. Ms. Neura said she believed that since Ms. Dale has been in the area to check on a new house being built that she saw it while out on inspections. Ms. Dale confirmed. Mrs. Robertson asked if her son and friend realized at the time they were constructing it that it was going to be very close to the property line? Ms. Neura said she would assume they did, but she had talked to the neighbor about it and he had no objections and there are other sheds throughout their neighborhood that are very close to the property lines, driveways that cross property lines and she was so excited about getting a shed, she didn't even think about a permit being needed.

Mr. Smith asked if the shed is attached or freestanding. Ms. Neura said it is attached to the house. Mrs. Robertson clarified that everything that is in there now was in her garage at one point in time. Ms. Neura said yes and once the weather breaks there are still a few more items they would like to put out there. Ms. Grentzer said a 5' x 16' shed isn't very big and it's hard to believe she's got as much in it as she has shared.

There was no one else with standing who wished to testify.

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

Mr. Smith moved to recess into executive session for the purpose of deliberating the merits of the case. Mr. Bauer seconded the motion and the roll call vote was as follows: Ms. Roberts – yes; Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Mr. Smith - yes. The motion carried and the Board recessed at 9:34 p.m.

Ms. Roberts moved and Mr. Bauer seconded the motion to reconvene. The roll call vote was as follows: Ms. Roberts – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Ms. Robertson – yes; Mr. Smith - yes. The motion carried and the Board reconvened at 10:06 p/m.

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-034:

With regard to BZA-2016-034 a request for Area Variance from Section 3.5.7 to allow a storage shed addition onto the existing house to encroach into the west, 5' required side-yard setback (10" proposed) for the property located at 8098 Rollie:

1. The property in question **will** yield a reasonable return or **can** be used beneficially without the variance because the property can continue to be used as a single-family residence.
2. The variance **is** substantial however it is over 80% of the requirement of 5' is because the storage room does not run the length of the entire house (just a portion of the garage), so there will remain some separation from neighboring property and structure. The storage room is lower than the existing garage.
3. The essential character of the neighborhood **would not** be substantially altered by the variance but the adjoining property **would not** suffer a substantial detriment as a result of the variance.
4. The variance **would not** adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.)
5. The property owner stated that she did not have knowledge of the zoning restriction.
6. The property owner's predicament **cannot** feasibly be obviated through some method other than a variance because being a corner lot and there is no other location on the property such addition could be placed without a variance.
7. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance.
8. Other relevant factor, include the Appellant stated they have a medically necessary handicap ramp that has been installed inside the garage to gain access into the home.

Mrs. Grentzer 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) (8) weigh more heavily to show that:

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- 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. Bauer.

Roll Call Vote was as follows: Ms. Grentzer – yes; Mr. Bauer – yes; Ms. Roberts – no; Ms. Robertson – no; Mr. Smith–yes. Motion passed 3-2.

The Chair stated the case has been Approved and the applicants may pick up their permit, following the May 18, 2016 meeting.

The third case of the evening was announced by Mrs. Harmsen.

Adjudication Hearing
Case BZA #2016-035
9189 E. Bayshore

BZA-2016-035 9198 E. Bayshore Road. Request for a Conditional Use to convert an existing commercial building to allow for both a Bed & Breakfast and Two-Family in accordance with Section 3.1.10.C.iii. and Section 3.1.10.C.viii. Area Variances for the Two-Family use are requested from Section 3.3 & 3.5.9 to have more than one (1) residential structure on the lot with less living space than required for a dwelling. Area Variances from Section 4.5.4, 4.5.5. and 4.5.6 for the B&B are requested since the room is separate from the main residence. Michael Wright, Owner/Applicant.

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing, there were none. Ms. Roberts moved and Ms. Grentzer 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 the application. Ms. Dale stated the application is to convert a former 16' x 22' commercial structure with a 4' x 14' open, covered porch that once contained a hair salon into either a bed and breakfast or 2nd dwelling unit. The applicant would like to have the option to either establish the space as a bed and breakfast and if for some reason that does not become viable for them, then to rent out the unit (monthly or yearly) or vice versa. In addition to the former commercial activity, the property contains a single-family dwelling and shed. At the time the current owners purchased the property in September 2010, the hair salon was still in operation and they continued to honor the commercial space rental agreement until October 2015.

Ms. Dale stated the owner is asking for two different Conditional Uses to be established on the property for the same structure. Both uses are required to be attached to the single-family structure. A two-family dwelling is required to provide a kitchen and its own separate entry, but this conflicts with the B&B regulations, which does not allow this. Consideration also has to be given that the structure in question was used in a commercial capacity for many years and only just recently ceased operation. Should this request be denied, the property owner has the right to reestablish some sort of neighborhood business or personal service business operation out of this structure since the property is zoned "R-C" Recreational Commercial.

Ms. Dale reviewed the zoning resolution requirements for each use as it was outlined in her staff report. Section 4.3 applies to a multi-unit development only, not a two-family. Per Section 3.4 for dwellings in the "R-C" zoning district with both public sewer and water, the "R-3" High Density Residential zoning district Development Standard requirements apply. Section 3.1.4.D requirements are met except the minimum building width which is required to be 20' wide. The existing structure is 16' and is a grandfathered, thus per Section 7.9.2 it may remain and a variance is not needed regarding the width. Per Section 3.3 the minimum required floor area for a 1-story dwelling is 800s.f.. This building only contains 352 s.f. and the applicants have no intentions at this time to add onto the structure to make the living space conform to this requirement. Section 3.5.9 states that "*in no case shall there be more than one (1) residential building on one (1) lot except as specifically provided*". This section essentially requires the 2nd dwelling unit to be attached to the single-family dwelling structure. However, the structure is detached from the single-family structure. Variances from these sections would be needed to establish a 2-family use on the property.

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In regards to the bed & breakfast use, Ms. Dale explained that the owners at this time have no intention of employing an individual not residing on the property and the single-family home structure is their permanent residence. The subject structure under the B&B option does meet the room size requirement of 100s.f and this is the only room to be offered for rent (up to 4 rooms are allowed). There is ample space available on the property to meet the parking requirement. However, per Section 4.5.4, 4.5.5 and 4.5.6 variances will be necessary if the structure is established as a B&B because it has an independent entrance from the single-family residence, and while it's not really an accessory structure, it is separate from the main residence and the unit will have a full kitchen and cooking facilities in it according to the floor plan.

Ms. Dale explained that the Board when deliberating the case, need to take into consideration both the Conditional Use Standards and the Duncan Standards for the variances. Ms. Dale disclosed that the Board can approve, deny or approve with conditions the requests as a whole, or if they feel one use over the other is more appropriate then they can separate the decision.

Michael Wright, 9198 E. Bayshore came forward and sworn in and attested that the paperwork the Board received was what he submitted to the Board. Mr. Wright stated the structure was used as a beauty parlor since 1956 and may have been built prior to the single-family home. He said the women who owned the property before him would do 10-12 appointments a day so there would be a lot of traffic in and out and thinks that would be cut back a lot if it would become a rental unit.

Ms. Grentzer asked if the floorplan they were provided in their packet that shows a murphy bed is the layout they would use for a rental unit for 1-family. Mr. Wright said yes. Ms. Gretzer said she has been in this building many times over the years and it is so small, she doesn't understand how they could fit a whole family in there. Mr. Wright said if they were able to rent it monthly, they would ideally like to have a single person or a couple. Ms. Roberts asked for clarification if they could rent monthly. Ms. Dale said yes, as long as it's 30 days or more. Ms. Roberts said for some reason she had the idea that it had to be for 6 month. Ms. Dale said no, that was not the requirement. Mrs. Robertson clarified that it would only be one person or one small family living in the space at once. Mr. Wright agreed.

Ms. Grentzer said the one consideration is as a rental unit and the other is a bed & breakfast, or is the house being requested as the bed & breakfast? Mr. Wright said the former hair shop structure is the only building they are considering. Mr. Wright said they feel like they need to be able to rent it daily or at least on weekends and as a B&B they would be able to do that. Mrs. Robertson confirmed that if it was approved as a B&B they could rent it out like a hotel room. Ms. Grentzer asked if they would be supplying a meal. Mr. Wright said they would supply breakfast, but they would also have a stove in the unit. Mrs. Robertson asked if they were calling it a B&B just so they could rent it weekly or daily. Mr. Wright said yes.

Mr. Smith said the way he sees it, Mr. Wright is asking for to mutually exclusive uses. There are a bunch of rules for a B&B that do not agree with the rules for a separate dwelling unit. Mr. Wright said he understands what Mr. Smith was saying. Mr. Smith said it's a way to get around the rental rules, but Mr. Wright is asking for both. Mr. Wright said he would like both because he would like to have that option.

Mrs. Robertson reminded the Board that they may vote separately on each of the uses as well. Ms. Roberts said she had a question because it says in the staff packet that denial would result in denial of the whole thing, but can't we approve one without the other? Ms. Dale said they could, but what has been presented are 2 uses in one request and if they deny, both uses would be denied. She said they would have to have 2 different findings that one use is more acceptable than the other and its respective variances.

Ms. Roberts stated this is 352 square feet, and her son lives in New York in 375 square feet and said she doesn't understand why Mr. Wright wouldn't want to rent this on an on-going basis to secure the amount brought in over a longer period of time as opposed to risk renting it just during the summer. She stated she didn't feel this was all that tiny or unlivable, especially up here where people are outdoors so much. Mr. Wright said he personally would prefer to rent it out like she is saying, but his wife would really like to try the B&B and he has been told by others in the area that he's crazy and would do better weekly.

Mr. Bauer asked if there is a heat source to the building. Mr. Wright said it was propane, but it's going to be changed to P-Tac heat and explained that it's similar to what is found in hotel rooms where it's mounted to the wall, but electric. Ms. Grentzer asked if he lives in the main house and he said he does. Ms. Robertson clarified that he would continue doing so and it's really a question of what they can do with this other building. He said correct.

There was no one else with standing who wished to testify.

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Ms. Roberts made a motion to close the public comment segment of the hearing. Seconded by Mrs. Grentzer.

Mrs. Grentzer motioned to recess into executive session for the purpose of deliberating the merits of the case. Mr. Bauer seconded the motion and the roll call vote was as follows: Ms. Roberts – yes; Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Mr. Smith - yes. The motion carried and the Board recessed at __10:30__ p.m.

Mr. Smith moved and Ms. Roberts seconded the motion to reconvene. The roll call vote was as follows: Ms. Roberts – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Ms. Robertson – yes; Mr. Smith - yes. The motion carried and the Board reconvened at __10:55__ p.m

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-035:

With regard to Case # BZA-2016-035, being a request for a Conditional Use to convert an existing commercial building to allow for a Bed & Breakfast or Two-Family in accordance with Section 3.1.10.C.iii, and Section 4.5 for the property located at 9198 E. Bayshore Road:

1. The Conditional Use **will not** be harmonious with and in accordance with the general objectives of the Danbury Township Land Use plan because significant variances from the Zoning Resolution will be required.
2. The Conditional Use **will not** be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use **will** change the essential character of the same area because of the same reason in #1.
3. The Conditional Use **will not** be hazardous or disturbing to existing or future neighboring uses.
4. The Conditional Use **will** be detrimental as a whole because of the significant variances.
5. The Conditional Use **would** be served adequately by essential public facility and services.
6. The Conditional Use **would** have vehicular approaches to the property which **would** be designated so as **not to create** an interference with traffic on surrounding public/private streets or roads because all vehicular approaches will remain the same.
7. The granting of the application **is not** necessary for the preservation and enjoyment of a substantial property right and would be merely to serve a convenience to the applicant.

Mr. Smith moved that the Board adopts the findings of fact as read by the Recording Secretary and further moved that the Board has given due regard to the nature and condition of all adjacent uses and structure; the influence of the request on adjacent properties, neighborhood and community, the uses specifically mentioned in the "R-C" Recreational Commercial zoning district and after considering and weighing these factors, the Board finds that Decision Standards(s) (1) (2) (7) weigh more heavily to show that:

- a. The request **is not** consistent with the Conditional Uses specifically mentioned in the "R-C" Recreational Commercial Zoning District and the intent and purpose of the zoning resolution.
- b. There **is not** a preponderance of reliable, probative and substantial testimony and evidence that **supports** the applicants request for the Conditional Use and Area Variance;

Therefore, the requests should be accordingly be **DENIED**.
 Motion Seconded by Ms. Roberts.

The roll call vote was as follows: Ms. Roberts – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Ms. Robertson – yes; Mr. Smith - yes. All in favor, motion passed.

The Chair stated the case has been denied and the applicant may be in touch with staff on what other options they may have.

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Signing of Decision Sheets

Mrs. Robertson asked if there were any corrections or modifications to the decision sheets.

- a. **BZA-2016-010 5831 E. Harbor.** Request for a Conditional Use to allow for a 26 unit Condominium Development in accordance with Section 3.1.10.C.iii and Section 4.3. **Larry & Linda Beerman, Owner in Contract w/ Rospert Enterprises, Inc. William & Bree Brown, Agents.**

Mr. Bauer motioned. Mrs. Grentzer seconded. Voice Vote: All in favor, none opposed.

- b. **BZA-2016-006 Lot 21, Plat II of Harbor Bay Estates (Roche Pointe Condominiums).** Request for a Major Modification to a previously approved Conditional Use (BZA-2007-217) to replace 4 structures/8 condo units with 2 detached garage buildings, each containing 6 garage bays/units for the owners of Roche Pointe Condo units. Also requesting an Area Variance from Section 5.1.1.C.i to allow 24'6" tall garage structures (20' required). **Dean Talip, Agent/Appellant, American Title Agency, Inc. / Owner.**

Mr. Bauer motioned. Mrs. Grentzer seconded. Voice Vote: All in favor, none opposed.

- c. **BZA-2016-023 216 Plum.** Request for Area Variance to Section 3.1.5.D to allow for a 2-story addition to be setback 1'8" from the south property line (3' required). **Terry & Patricia Tomlinson, Owners/ Dennis Feltner, Agent.**

Mr. Bauer motioned. Mr. Smith seconded. Voice Vote: All in favor, none opposed.

- d. **BZA-2016-024 161 Laser.** Request for Area Variance to Section 3.5.7 to allow an awning addition to be setback 7'6" from the front property line (20' required). **Daniel Noll, Owner/ D.J. Swearingen, Agent.**

Ms. Grentzer motioned. Mr. Bauer seconded. Ms. Roberts asked if she should vote no since she voted no on the case. Mrs. Robertson clarified that it's a motion to accept the Decision Sheet as prepared which reflects her no vote. Voice Vote: All in favor, none opposed.

- e. **BZA-2016-025 1530 S. Danbury N./ SR 269.** Request for a Conditional Use to allow for a Temporary Use/Structure in accordance with Section 3.1.10.C.ix. and Section 6.2 for a petting zoo at Monsoon Lagoon. **First Bellevue Properties, Inc., Owner in Contract w/ William Colburn & Allan Jacoby, Michael Prosser, Agent.**

Mrs. Bauerer motioned. Ms. Roberts seconded. Voice Vote: All in favor, none opposed.

Approval of the March 16, 2016 Minutes

Mrs. Grentzer made a motion to approve the March 16, 2015 Meeting Minutes, Mr. Bauer seconded, and the motion carried.

Old Business

There was none.

New Business

There was none.

Other Business

There was none.

Reports and Communications from Members and Staff

There was none.

Adjournment

Ms. Roberts moved to adjourn the meeting and Ms. Grentzer seconded the motion. All in attendance were in favor and the motion carried. The meeting was adjourned at 11:10 p.m.

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Cheryl Hansen
RECORDING SECRETARY

Carol Robertson

Louetta Grentzer

Paul O. Brown

John William Smith

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