

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

July 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 Senior Center located at 8470 E. Harbor Road. The Pledge of Allegiance was recited. The roll call showed the following present: Ms. Carol Robertson, Mrs. Loretta Grentzer, Mr. Bill Smith, Mr. Brad Bauer, Ms. Sherry Roberts, and Alternate Sharon Michael. Alternate Joseph Fetzer was absent. 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, Ed Elbrecht, Janet Elbrecht, Pat McCormick, David Geyer, William & Bree Brown, Dr. Alice Randolph, George Wilber, Esq., Jack McGraw, Jack Marsh, Becky Kerzee, Cindy Kaple, Ron Dombrowski, Ted Rothermel, Sandra Rothermel, Denis Burke, Steve Pesek, Ted Foster, Martin & Bobbie Dorr, Tim Edwards, Tina/Mildred Stanish, Linda & James Pijor, Greg & Kelly Darr, Tony & Patty Brugnone, Jodi & Bev Kopanski, Charles & Dianne Goddard, Doug Goddard, Jessica Zeigler, Pam Sweeney, Joanne Kimberly, Patty Delany, Pete Johnson, Dennis Pamer, Terry Overmyer, Emily & Jake Dunfee, Noreen Funari, Linda & Michael Subleski, Kathy Holmes, Ted Haubert, Tony Steck.

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

The Chair 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 #2016-107
177 Laurel Avenue

Request for an Area Variance to Section 3.1.5.D to allow for a porch addition to be setback 2.7' (32.4") from the front property line (5' required). Ed Elbrecht, 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.

Mr. Smith made a motion to open the public hearing, Mr. Bauer seconded the motion. All were in favor and the motion carried.

The Chair asked Ms. Dale to give an overview of the case. Ms. Dale stated the application is to remove an existing wrap around porch, move the original 1½ story house north on the lot and place on a new foundation and then construct a 14' x 14' 2-story, enclosed porch addition onto the front of the house. The applicant is asking to allow the porch to encroach into the front-yard setback essentially 50%, so that it aligns with the existing homes on the lots to the north and south and it will be no closer to the front property line than the current house and porch. The applicant is proposing a 2.7' (32.4") front yard setback from the property line to the overhang. The overhangs are 18", making the foundation of the new porch 4'1" from the front property line. The applicant has presented this plan to the Lakeside HP-DRB, whom has approved the proposed plans and does support the request for the variance from the Township. They have also approved the applicant's plan if the variance is not granted. Ms. Dale reminded the Board that their decision is completely independent of Lakeside's and reviewed their decision standards. Ms. Dale concluded her presentation by reviewing the decision standards the Board utilizes in their deliberations.

Ed Elbrecht came forward and was sworn in. He reviewed the documents and attested that the paperwork the Board received was what he submitted to the Board.

Mr. Elbrecht stated a denial of the variance would reduce the value of this property because the view of the lake will be obscured. The setback requirement is non-conforming to the neighborhood and this porch addition will align with the neighboring homes. Lakeside Design Review Board has given approval for this plan. Mr. Elbrecht submitted an aerial photo from Ottawa County website that showed Laurel Avenue has been shifted farther to the west than what was planned by the County because of trees, therefore this places the cottage's front overhangs 17' and 20' off the road pavement. Had the road been placed in the correct location the cottage would be 13' from the edge of the pavement. This adds an additional 4' and 7' to the front yard. Ms. Dale stated that what Mr. Elbrecht presented will be labeled as Elbrecht Exhibit number one. Mr. Elbrecht continued by stating the removal of the side porch and installing original style corner posts, the porch will be much closer to the original historical look than is currently the case. There has been consideration given to adding on to the back of the cottage, although a variance would be needed for the twenty percent rule.

RECORD OF PROCEEDINGS
Danbury Township Board of Zoning Appeals

Minutes of

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

July 20, 20 16

Mr. Smith asked how this setback will compare to neighboring homes on both sides. Mr. Elbrecht stated this home will be setback fourteen inches. Discussion centered on comparing the setbacks from the front property lines at 171, 177 and 185 Laurel Avenue. Mr. Elbrecht stated his front wall will be two inches farther back than the property to the south.

Pat McCormick, 171 Laurel, came forward and was sworn in. Ms. McCormick stated they were very pleased when they were shown the plans to remove the side porch and restore the porch to a more historical look and by making these changes, a large parking space will be added to the south. Mr. Smith stated this change brings the property into compliance for the two off-street parking spaces requirement. Mr. Elbrecht agreed.

The Chair asked David Geyer if he wished to speak and he stated he had nothing to add.

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

Mrs. Grentzer moved to close the public comment segment portion of the hearing. Seconded by Mr. Smith. All were in favor and the motion carried.

The Chair asked for a motion to recess into executive session for the purpose of deliberating the merits of the case. Mr. Smith made the motion. Mrs. Grentzer seconded the motion and the roll call vote was as follows: Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Mr. Smith – yes; Ms. Roberts – yes. The motion carried and the Board recessed at 6:57 pm.

Ms. Roberts moved and Mr. Bauer seconded the motion to reconvene. The roll call vote was as follows: Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Mr. Smith – yes; Mr. Roberts – yes. The motion carried and the Board reconvened at 7:12 pm.

The Chair asked Mr. Harmsen to read the Findings of Fact for BZA Case # 2016-107.

With regard to BZA-2016-107 a request for Area Variance from Section 3.1.5.D to allow for a porch addition to be setback 2.7' (32.4") from the front property line (5' required) for the property located at 177 Laurel:

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 and the property is of sufficient size to accommodate the setback requirements.
2. The variance is substantial but the proposed addition will align with the existing houses.
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 as #3 above.
4. The variance **would not** adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.).
5. The property owner **did** purchase the property with knowledge of the zoning restriction as they stated in their narrative statement.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by meeting the setback requirement at the time the whole house is moved and relocated on the lot.
7. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance because this aligns the house with neighboring homes and the movement of the home does provide two off-street parking spaces.

Mr. Bauer 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 **supports** the applicants request for a variance.

Therefore, the Variance should be accordingly **APPROVED**.
 Motion Seconded by: Mrs. Grentzer.

Roll Call Vote was as follows: Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Mr. Smith – yes; Ms. Roberts - yes. Motion passed 5-0.

The Chair stated the case has been Approved and the applicants may pick up their permit, following the August 17, 2016 meeting.

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held _____ July 20, _____ 2016 _____

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

**Adjudication Hearing
Case BZA #2016-108
5401 Maritime Shoreway**

Request for a Conditional Use to allow for a 4 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 asked if there were any Board members who would have a conflict and wished to abstain from this hearing. Ms. Sherry Roberts abstained from this hearing. Ms. Robertson announced that the record should show that Sharon Michael, Alternate will be seated on the Board in Ms. Roberts place.

Mr. Smith moved open the public hearing, seconded by Mrs. Grentzer. All were in favor and the motion carried.

The Chair asked the Zoning Administrator to give an overview of the application. Ms. Dale stated that no exhibits, testimony or other information that was presented in February, March or April earlier this year regarding this property carries over for this case since it is a whole new application. This application is to convert 4 existing hotel suites into condominium units. The building currently exists on the north side of the property. The applicant also intends to install a 32' x 40' in-ground pool and an 8' x 20' pool equipment building. Each unit consists of 2 bedrooms & 2 baths, open living room off the kitchen, and parking is provided in the parking lot. The site plan delineates where parking will be provided for each unit, including the West Harbor Marina Boataminium and The Landings Association.

Ms. Dale went through the Chapter 4.3 Zoning Resolution requirements for Condominiums sharing that the application is allowed up to 34 units and at this time they are proposing 4 units. The lot width to depth ratio is 1 to 5 is satisfied, the existing lot of record language does not apply to this situation. The front yard setback is shown as being 70' from Ash Street (east property line) which is the underlying R-C zoning district requirement and shows the pool and pool equipment building meeting that setback requirement. The existing building is only required to be 35' from Ash as a Condominium use. The 25' rear yard setback is taken from the south property line in-part due to the pre-existing accessory structure (Bath House) location. The 10' side-yard setback, to be established out in the water, may occur per definition #176 "Yard, Side" because the definition refers to the "lot line" as opposed to the "water's edge" like the front-yard definition does.

There are no other buildings proposed on the property except the pool equipment building, which is not designed for living purposes, thus the building separation requirements are met. All of the existing units to be converted meet and exceed the minimum dwelling size requirements and the existing structure is 29'4" high, well below the maximum 35' height requirement. Just over a ½ acre (0.697ac./21,888s.f.) is required to be provided for open space. The applicant indicates that 0.546 acres (23,799s.f.) is provided. The open space is shown on the site plan as the diagonal hatched area throughout the proposed development. The area on the NW jetty alone would be sufficient for this specific building under consideration for a condominium designation. Communal trash dumpsters are near the entrance of the property, but a screening plan needs to be submitted. There is no area specifically identified for Alternate Vehicular Storage, thus it is her belief that the applicants have no intentions of allowing continued storage of boats on the premises.

Ms. Dale stated she received a letter from the Ottawa County Sanitary Engineer's Office June 29, 2016 stating there are sufficient sewer and water utilities to support this proposed project and the letter was entered into the record as Township Ex. #2. She clarified that Exhibit #1 is the applicants BZA application that was submitted and provided to the Board as part of their packets received prior to the meeting.

Ms. Dale concluded her presentation by reading the 8 recommended conditions for the Board's consideration in her staff report should they decide to approve the request.

William & Bree Brown came forward to be sworn in and attested the documentation provided to the Board was what they submitted.

Ms. Brown stated this application is to convert an existing commercial hotel to a 4 residential condominium units the use would be the same. There is no fire issue with this application, sprinklers and alarm monitoring is already in the building. All utilities are existing, therefore providing adequate utility service. There is sufficient parking area for this building without affecting a majority of the rest

RECORD OF PROCEEDINGS
Danbury Township Board of Zoning Appeals

Minutes of

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

July 20, 20 16

of the property. This request benefits the surrounding properties. This Conditional Use complies with all the zoning requirements.

Mrs. Grentzer asked who would be allowed to use the pool. Ms. Brown stated it would only be available to the four condo owners and those in the Marina.

Mrs. Robertson asked Mr. Wilber if he would be going first and he said he had nothing to add at this time.

Alice Randolph, 5465 Constitution Blvd., came forward and was sworn in. Ms. Dale stated Ms. Randolph will be reading a written statement which will be labeled Randolph Exhibit #1.

Ms. Randolph stated a four unit condo would be very nice and they would like that. The concern is this project provides a site plan for the whole 5.025 acres and does not clearly delineate what will be condominium property and what will be marina property. There are different rights and responsibilities and easements for both. Is the pool going to be on the condominium property or the marina property? Ms. Randolph stated she had previously asked Ms. Dale if the application is approved, is the site plan approved? Ms. Dale stated the application approval includes site plan approval. Ms. Randolph stated that some items on the site plan are not accurate. The trash receptacle is located on a circle that is owned by someone else. It is referred to as the cul-du-sac at the Cove and not owned by Mr. Brown. The site plan shows the Ash Street dimensions have been changed. The owner has not agreed to this. This plan also changes the recorded parking easement of West Harbor Landing Boataminium without their agreement. The site plan is similar to the site plan submitted with BZA-2016-011 which was denied. This raises the question that this application, if approved, will provide conditional zoning for the entire parcel eliminating the requirement to have further oversight from BZA for additional condominiums or boataminiums. She stated they request that the BZA deny this application because without a clear description or Declaration of Condominium, the property that is to be in this condominium is not clearly delineated from the commercial West Harbor Marina. The Browns are currently and deliberately violating existing zoning. In his application, Mr. Brown has indicated that zoning regulations require 35 parking spaces for the 52 owners of the boataminium water slips. On June 30th at 6 p.m., the Browns sent an email prohibiting parking on the West Harbor Marina property and threatened that vehicles would be towed. This prohibition is still in place. This situation makes them in violation of the zoning regulations. This plan shows that in the center, fifty two deeded docks each are individually owned and property taxes are paid on each of them. Safety is still compromised because the plan gives no indication of how safety vehicles will access and egress this property. Number seven of the staff recommendations requests a site plan depicting the Alternate Vehicle Storage Plan to be submitted by July 29th, 2016, to be considered by the BZA Board members before the next meeting on August 17, 2016. We are requesting the BZA Board Members not deliberate this project until all the aspects of this project can be available for public review and comment. We respectfully disagree with the staff analysis that states the granting of the application is necessary for the preservation and enjoyment of a substantial property right and not merely to serve as a convenience to the applicant because the property is zoned R-C and is fully available for the preservation and enjoyment of the owners as a full service commercial marina and hotel. We fail to see how the current property rights are in any way abridged or constrained. Further this is not undeveloped land. It is fully used as a commercial entity.

Ms. Dale stated the option to cross examine was offered to Ms. Brown, who indicated she would wait until everyone was done speaking.

Sherry Roberts, 5465 Constitution Blvd., came forward and was sworn in. Ms. Roberts stated the Notice of the Public Hearing went out in error incorrectly stating this issue was a hearing for West Harbor Lagoons when it was supposed to be West Harbor Landings. Therefore, she is asking this not be heard but postponed to allow accurate posting of the hearing. Ms. Roberts passed out copies of an email from Fire Chief Keith Kahler dated 6/23/2016. Ms. Dale stated it would be called Roberts Exhibit #1. Ms. Roberts went on to say the Fire Chief is now saying there is need for a 34' turn around.

Ms. Brown stated she objected to this submission because there is no relevance to this application. Mr. Stopar stated her objection is noted and asked that Ms. Roberts please continue.

Ms. Roberts went on to say she has a toy fire truck to show that is to scale. The fire truck is 34'3", same as what the Fire Chief is saying is required in his email. Ms. Brown objected again stating she has not seen this before. Mr. Stopar stated her objection is again noted.

Ms. Roberts stated the fire truck has an 18'2" radius to turn around in currently. The truck is bigger than the diameter. Number two, with the pre-cast structure [bridge-like structure around the marina] the fire truck will end up in the water. Mr. Roberts presented an article about a woman who was hit by a fire truck while wearing ear phones. Ms. Dale stated this was a newspaper article from the New Herald dated 6/29/2016 and would be Roberts Exhibit #2. Ms. Brown reviewed Exhibit #2 and objected. Mr. Stopar stated the objection is noted. Ms. Roberts stated this is a safety issue with people walking, riding in their golf carts and people running. She stated this is the second time she

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

July 20,

2016

respectfully questioned the Fire Chief and he has changed his mind twice now. This seems to be a back door request from the last request that was rejected.

Mr. Stopar asked Ms. Roberts for clarification on where the error was made in regard to the notice of this hearing. Ms. Roberts stated it was on the Township website. Mr. Stopar asked, if it was in the report documents for this hearing. Ms. Roberts replied, it was in the packet of information for this hearing that was posted on the website.

Mr. Wilber came forward and distributed new information to the Board members. Ms. Dale stated it included a four page letter dated July 20th, 2016 now labeled Wilber Exhibit 1. Exhibit 1-A, includes the West Harbor Marina & Boataminium a Marine Condominium Plat which is page 22-A and 22-C and includes an easement description. Exhibit 1-B which is Deed, Easement and Covenants, and Restrictions between Charter Captains Marina, Buck Point Limited Partnership, West Harbor Cove Marina, Volume 366 Page 152-181. Exhibit 1-C which is West Harbor Marina Boataminium a Marine Condominium Volume 38 Page 8 highlighting some of the parking lot area of the subject property and the second page Volume 38 page 10 highlighting a particular paragraph regarding West Harbor Marina & Boataminium a Marine Condominium. Exhibit 1-D is an email from Bree Brown dated June 30 2016 to Mr. Wilber and others copied, regarding parking. Exhibit 1-E which is a plat of Cedar Cove Acres Volume 22 page 13.

Mr. Stopar asked Mr. Wilber if these documents were being provided for the first time. Mr. Wilber answered that is correct. Ms. Brown objected because the documents are irrelevant. Mr. Stopar stated duly noted.

Mr. Wilber stated he is representing West Harbor Boataminium, West Harbor Group, West Harbor Landings Boataminium, West Harbor Cove Manufactured Home Park, West Harbor Marine Boataminium, West Harbor Group and Buck Point Limited Partnership. There is concern because the site plan governs what the Conditional Use covers, where and what can be done. The site plan is not accurate, it has mistakes, erroneous information, and mischaracterizations, and we did not want that to become binding moving forward. Ash Street is depicted as an ingress and egress for West Harbor Landings Boataminium. Ash Street is owned by West Harbor Cove and there has been no agreement made regarding the use of that area for ingress and egress. The other concern is they submitted a 5.025 acre description to convert this to a four unit condominium and it is safe to say that the condominium documents are not going to entail the five acres of land. It will be a much smaller parcel that only encompasses this building and the necessary amenities for that building. That brings into question what you are approving, as Ms. Dale indicated earlier, this project has to be a minimum size of one acre. That brings into question the criteria which the Board is approving. When the appellants come in to submit the request for only a half-acre, does that meet the zoning requirements? The condo declarations are not before you declaring the lot size. There are questions related to the setback and of what is determined to be the front, sides and rear, related to setbacks, and the staff has not analyzed this matter.

Mr. Wilbur stated the other concern is the parking situation. This property was developed in conjunction with West Harbor Landings Boataminium and West Harbor Marina Boataminium. West Harbor Landings Boataminium was developed first just east of the Brown's property. Located on the east side of this property, there is an access easement that provides parking and access for these eleven units that's not depicted on the site plan in front of the Board, it is Exhibit A that was just submitted. Exhibit B is a Deed that grants that Easement to West Harbor Group to maintain, take care of and control, yet that is not depicted on the site plan the Board is reviewing. The next development's done, by common owners, was West Harbor Landings and West Harbor Marina Boataminium formerly known as Charter Captains Marina and was formed from a part of Brown's property now called West Harbor Marina. Exhibit C is a copy of the Deed, is signed by the previous owner of Charter Captains Marina. Charter Captains Marina dedicated a parking area for the docks which are for these eleven units and above that, there is an area shown as Marina facilities. The legal description is shown on page two and defines the area listed for parking that created the parking area for the Marina Boataminium. Exhibit D is an email from West Harbor Marina dated June 30th at 6:10 p.m. notifying the condominium units that parking on their property will not be allowed specifically by the Marina Boataminium. This notification was just before the Fourth of July weekend and if anyone parked there, the vehicles would be towed. This prompted a lawsuit to be filed on July 1st. Judge Winters recused himself because of a conflict of interest therefore the Supreme Court will be assigning a Judge to this case. Litigation between the condos and the Brown's is pending regarding this situation. Exhibit E is for Cedar Cove Acres Subdivision showing a cul-du-sac with ingress and egress which was required by the County Subdivision Regulations. Part of what the Browns own is part of Cedar Cove Acres Subdivision however they do not own the cul-de-sac, which is owned by the original developer, Buck Point Development and they put in writing that they will not authorize trash collection dumpsters to be located within the confines of the cul-de-sac. In the zoning code, it defines density being and number of trailer lots or manufactured homes or dwelling units that can be

RECORD OF PROCEEDINGS
Danbury Township Board of Zoning Appeals

Minutes of

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

July 20,

20 16

developed on a given area of land. It states the submerged land under 574 feet above sea level shall be included for compliance of the density requirement of the Resolution. Only so much of the submerged land can be constructed over. The 5.025 acres is a combination of submerged land and upland. Once a Conditional Use is approved, minor modifications may be approved by the Chairman and the Zoning Administrator, the plan does not show where the upland and where the submerged land is and what will be constructed over the submerged land therefore we feel the figures of 34 allowed condo units is inaccurate. Ms. Brown objected saying this is not relevant. Mr. Wilber stated it is relevant because that is the site plan board members have in front of them.

The Chair stated each person who wishes to speak has three minutes to do so.

Steve Pesek, 1673 N. Harbor Crossing came forward and was sworn in. Mr. Pesek stated he is one of the eleven adjacent property owners that have a dock. Mr. Brown wants to widen Ash Street for our parking which puts us further away from our docks. This will cause us to be farther away from our docks therefore our properties will take a value hit.

Ms. Brown objected stating his property values have nothing to do with this application. Mr. Stopar stated objection noted.

Ms. Brown asked Mr. Pesek if he had been denied parking. Mr. Pesek stated he has not however, neighbors told him he would be towed if he did park in the easement. Ms. Brown asked if he was aware that all eleven dock owners have parking next to their boat slip. Ms. Brown asked Mr. Pesek if he was aware the other owners have been given parking permits just by providing their name and address. Mr. Pesek replied he was not aware of that, but that he did provide his name and address to Mr. Brown yet never received a parking permit, however there is an easement and he has the right to park there.

Ms. Brown stated Mr. Brown would respond to the questions. Mr. Brown stated he would talk about the site plan and it shows the easement location for the Landings.

Mr. Brown stated at the time of submission of this application, there was a verbal agreement with the Landings, the Boataminiums, the Group and everyone Mr. Wilber represents. There was a verbal agreement that we would provide parking as depicted. The parking has no relevance to this application. This application is for four condo units and the plan shows clearly there is parking for these condos. We agree with Mr. Wilber that the entire site plan of the marina should not be binding on any of the parties involved, however, the site plan shows the entire marina for reference. The plan shows where the units are located in relation to the entire marina. The condo property would be the condos and the green space that surrounds it.

Mr. Smith asked Mr. Brown to show where the green space is located. Mr. Brown showed the crosshatch area on the site plan. Mr. Stopar stated for the record, Mr. Brown was showing the BZA members the crosshatched area around the building on the site plan and is the green space area that Mr. Brown referred to.

Mr. Smith stated, plus the four parking spaces.

Ms. Brown stated they feel this has no relevance to this application and feel Mr. Wilber has misrepresented, West Harbor Boataminium so-called easement that does not exist and they have failed to provide evidence that it exists as well as the title company. The trash receptacle can be moved although they don't feel that is relevant to this application, it has been in this location for over twenty-one years and is used for marina purposes and that it will continue to stay until further order.

Mr. Smith asked who owns the receptacle. Ms. Brown stated it is theirs meaning West Harbor Marina, additionally used by the Landings and the Boataminium without permission.

Mr. Smith asked for clarification of the parking stating two parking spaces are needed per unit. Ms. Brown stated they plan to put an easement as needed for additional parking in the area that will be owned by the condo units. Ms. Brown stated there will be an easement for parking but they would not necessarily own the property.

Mr. Smith asked if this plan meets the parking requirement. Ms. Dales stated there are four parking spaces on the east side of the building and there are four spaces delineated on the site plan to the south of the building in the general parking lot. Ms. Brown stated the property surrounding the condominiums will be sufficient to include four parking spaces and the green space. An additional four spaces will be located on the marina property. Ms. Dale asked if they would be marked as such. Ms. Brown indicated they would be.

Mr. Smith stated the four additional spaces will be on another property under different ownership other than the condo unit owners. Ms. Brown stated she would simply argue that the additional spaces do not have to be shown on the condo property plan just as long as they are provided. The extra spaces will be provided adjacent to the condo property with absolute designated parking and we would provide that to zoning during the final permitting process.

Mr. Wilber stated what they are asking for is not portrayed on the site plan therefore there is no review of the plan for these parking spaces because there are no dimensions or acres, or size as to

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

July 20, 2016

what is really going to be the condominium. It's not the five acres, it's going to be much less than that. Is the condo property one acre or not?

Ms. Brown stated the one final thought is the area surrounding property would be at a minimum one acre in size. We don't have those exact dimensions right now but that will be provided to get a zoning permit and we would guarantee that a minimum of one acre would be provided.

Mr. Stopar stated the questioning part of this hearing is done.

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

Mr. Smith 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. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Mr. Smith – yes; Ms. Michael – yes; The motion carried and the Board recessed at 8:26 p.m.

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; Mr. Smith – yes; Ms. Michael – yes; The motion carried and the Board reconvened at 8:57 p.m.

Mrs. Grentzer made a motion to continue the hearing until August 17, 2016 to bring back more details on the plan related to the boundary limits of the condominium, trash relocation and other details discussed. All documents must be in to the Zoning Administrator by August 3, 2016. Ms. Michael seconded the motion.

The roll call vote was as follows: Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Mr. Smith – yes; Ms. Michael – yes; Motion passed 5-0.

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

**Adjudication Hearing
Case BZA #2016-110
501 Miley**

Request for a Conditional Use to allow for a 64 unit Condominium Development in accordance with Section 3.1.10.C.iii and Section 4.3. Also requesting an Area Variance from Section 4.3.2.A to allow 4 more units than permitted. Limpert's Marina, LTD, Owner in Contract w/ F2 Companies, Michael Fite & Edward Foster, Agents.

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 made a motion to open the public hearing, seconded by Mr. Bauer. All were in favor and the motion carried.

Ms. Dale announced that the record should show that Sherry Roberts was reseated with the Board.

The Chair asked Ms. Dale to give an overview of the case. Ms. Dale started that the application is to allow for a 64-unit condominium development on the site of Limpert's Marina. The dwellings will be housed in 6, 2-story buildings containing 32; 1-bedroom dwellings and 32; 2-bedroom dwellings. The applicant has indicated that it is their intention to clear the site of all existing structures to make room for this proposal. They also intend to keep the marina and docks, but there will not be any services typically found in a commercial marina operation. According to the site plan they will also be providing a club house and community pool. At this time the agents, F2 Companies is in a contingency contract with Limpert's Marina. F2 Companies' primary concern at this time is obtaining the variance for increased density of 4 units to make the project financially viable (60 units allowed). They have indicated they will come back before the Board should any other variances be needed and with more detailed plans.

Ms. Dale went through the Chapter 4.3 Zoning Resolution requirements for Condominiums sharing that the application is allowed up to 60 units and 64 units are proposed. A variance is being requested for the increased density. The lot width to depth ratio is 1 to 5 is satisfied, the existing lot of record language does not apply to this situation.

A 35' front yard setback is required along Shrock, Northshore Blvd. and Miley. Based on this conceptual plan, the clubhouse and pool encroach and will either require a variance in the future or have to be relocated elsewhere on the property. The applicant has indicated that once a survey has been conducted and a more detailed plan is created, they will come back before the Board should those variances still be needed. Some of the buildings containing the 1 bedroom units also encroach,

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

July 20, 20 16

but appear to be able to meet the front yard setbacks if shifted slightly when a detailed plan is provided. The 25' rear yard setback is taken from the north property line established out in the water. This may occur per definition #172 "Yard, Rear" because the definition refers to the "lot line" as opposed to the "water's edge" like the front-yard definition does. The 10' side-yard setbacks run along the east and west property lines when not abutting street frontage.

The building separation requirement appears to be met with 30' shown. The ground floor living space requirement is met, but the one drawing for the individual 1 bedroom units indicates those units will have to be increased by 3 s.f. The 2 drawings submitted with floor plans do not match in scale. The proposed building elevations state the structures will be 35' high. No open space plan was provided and just over a ¼ acre (0.8687ac./37,840s.f.) is required. 64 units require 128 parking spaces. The applicant has shared there are 79 boat slips in the marina which would require 53 parking spaces for a total of 181 spaces. 183 spaces are shown. The applicant indicated they will provide communal trash dumpsters, but the location is not shown on the plan. The applicant has also indicated they will not be permitting the storage of boats or other Alternate Vehicular Storage on the premises. There is no correspondence received from Fire or Sanitary Engineer's office regarding this project.

Ms. Dale concluded her presentation by reviewing the decision standards the Board utilizes in their deliberations and the one condition listed in her staff report for the Board's consideration should they decide to approve the request.

Edward Foster, 6253 Riverside, Dublin, Ohio came forward to be sworn in and attested the documentation provided to the Board was what he submitted.

Mr. Foster stated his first name is Edward but he goes by Ted. Realizing this is not a normal request because they have not given the Board a plan that shows everything. They are asking, for sixty condominium units, an approved use with a Conditional Use approval. Ms. Dale stated that sixty is your limit. Mr. Foster stated for them to move forward, they need confirmation of an approval for the sixty condominium units this evening and then come back later to apply for the final four. This application is for a Conditional Use and a Variance, but the Conditional Use is most important to us at this time.

Mr. Stopar reviewed what was being requested stating, to be clear, what is being asked for is a Conditional Use approval for sixty units with no variances and you still need approval for Conditional Use. Mr. Foster replied, correct. Mr. Stopar stated, so that is step one. Mr. Foster replied correct. Mr. Stopar stated the next step is a density variance for sixty four units. Mr. Foster replied, correct. Mr. Smith added, there may be other variances once the detailed layout is presented. Mr. Foster replied correct and the 35' set back is met including for the pool and clubhouse. Ms. Dale sent us a list of suggested changes and these changes have been made on the new plan. Mr. Stopar stated no one has seen this new plan. Mr. Foster replied correct although it can be shown tonight. We are not running a public marina, the marina is for homeowners only, and wanted to clarify if we still need one hundred and eighty one spaces? Ms. Dale stated the way code breaks it down, it is based on use and you have condo's, you have a marina. Mr. Foster stated in the new plan they will not be accessing Shrock Road, they will be coming off of North Shore and are talking to the Ottawa County Engineer about that. Right now they have some access on Miley, some of the residents are requesting a type of emergency breakaway gate to Miley, we're not sure but maybe some of the residents want a new street, that's not a problem at all. There will be no on-site boat storage and we feel this is a great change for the neighborhood.

Mrs. Grentzer asked if they are not utilizing Shrock or Miley, what is the access plan. Mr. Foster stated the access will be from North Shore. Mrs. Grentzer stated the plan is not showing the ten percent greenspace. Mr. Foster stated there will be the required green space. Mrs. Grentzer asked if they build sixty units, would there be enough green space. Mr. Foster replied there will be more than enough green space with sixty four units. He stated the way they build and design units, it comes out to sixty four and secondly, the four units help us against the land purchase price that we are having to pay. Mr. Smith stated that four units do not make or break a project like this. Mr. Foster stated from an architectural standpoint it hurts because of replication.

Mrs. Grentzer stated then there is a more current plan the Board has not reviewed. Mr. Foster answered they have been making changes based on Ms. Dale's staff report, making sure setback requirements are met and all the other things that were suggested. Mr. Smith stated that possibly the only action needed at this point is the approval of a condo. Mr. Foster stated it could be, yes.

Mr. Stopar asked what kind of timing the contingency has on the contract. Mr. Foster answered, they are running up against the door right now and they are working with them to extend and this is obviously part and parcel of that.

The Chair asked if there were anyone present who wished to speak.

Tim Edwards, 311 Shrock came forward and was sworn in. Mr. Edwards wanted to know if a traffic study had been done. The traffic is already very busy in this area and it's a density problem especially on Sunday afternoon when many people are trying to exit out of the area. There are more

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held July 20, 2016

bicycles and foot traffic than ever before, therefore there is safety concerns. Mr. Edwards asked if there will be light posts in the parking lot and if there is, can they be shielded so the bright lights don't shine into thier homes. Is there going to be fencing to shield the headlights.? He stated he has nothing against improvement, just this will have an impact on traffic. He doesn't mind them walking on the road because there are no sidewalks there. There is a hydrant located by Shrock Road, will we still have access to that because that is the only one on Shrock, there is another hydrant on Hidden Beach.

Ms. Robertson asked if Mr. Foster would like to comment to those concerns or address them all at the end. Mr. Foster indicated he would wait once all the public comments were made.

James Pijor, 365 N. Florence Drive came forward and was sworn in. Mr. Pijor asked who is going to take care of the marina and are the surrounding residents going to be able to use the marina if there is one. Does each condo have a dock? Mr. Foster answered yes. Will the condos be rentable? Mr. Foster answered they normally have a minimum of two month rentals in the condo rules, there will be no weekly rentals. Mr. Smith stated Danbury Township allows only monthly rentals or longer.

Patty Delany, 319 Shrock came forward and was sworn in. Ms. Delany stated it should be their decision if this would be an upgrade to the neighborhood. She likes the quiet neighborhood but this is a change for all of us. She stated she has safety issues, for instance can a firetruck turn around because it can now, but can it then and can an ambulance come down the road or would it have to come in from Hidden Beach. I also agree with Mr. Edwards concerns related to increased traffic, parking lighting, vehicle headlights. Mr. Foster stated his comment related to traffic was a comparison to having an eighty boat marina, with these condos, the traffic would be less in comparison. Ms. Delany stated he said there would be no access to Shrock, maybe Miley, that it would be discussed with the residents, is that set in stone because this plan does not show it to be that way. Mr. Foster answered by saying the main access point is on Northshore, Shrock and Miley may need to be used for emergency vehicle access, these roads may need breakthrough gates. Mr. Smith said those gates can be broken through from either direction which might be a win win. Ms. Delany asked where the fire truck is going to turn around, what is the distance between my road and your property? Mr. Foster stated this development won't be impacting her road and he was not sure how that is relevant, it's private property, traffic study can be done. Ms. Delany stated her concern is the increased traffic with the children and families that walk on this street. Mr. Smith asked if they fence was it going to be a privacy fence? Mr. Foster said it will be a split rail fence.

Dennis Pamer, 327 Shrock came forward and was sworn in. Mr. Pamer stated his concern was the headlights, it appears to be head-in parking, shining directly at my house. I am going to have to access another marina. Is there public access from Shrock to Miley? Mr. Foster stated there is a private drive between the two and they are not showing access between Shrock and Miley. Mr. Pamer asked if that access could be considered. Mr. Foster stated then you're coming right through the middle of the property. We could do a sidewalk along the front of the property if that is something the residents would like to see. Mr. Pamer stated he thought sixty four units is too much. Who will be responsible for the maintenance of Miley Drive and will it be paved and curb cuts added?

Tony Steck, 1815 Danielle Drive came forward and was sworn in. Mr. Steck stated he was speaking on behalf of his mother, Mildred Stanish. Mr. Steck asked for clarification if the project was going to be built in phases, first phase being twenty four units, second phase will be built as the market dictates, how long is that expected to take? Mr. Foster answered, based on previous projects, it takes about three years to sell out. Mr. Steck asked if they will be making improvements to Miley Drive, like blacktop, drainage, curbs and curb cuts. What is the process for changing the maintenance responsibility of a road?

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

Mrs. Grentzer asked for Mr. Foster to clarify where the parking was going to be located.

Ms. Dale stated Zoning does not regulate landscaping. Mr. Foster stated they follow their own landscaping standards and they are not going to impact the neighbors negatively. We will definitely do a traffic study with the County. We do residential low lighting and nice lamps, not on high poles, so as not to create light coming into your homes. We've never done reverse-in parking, and with landscaping and the fence we will be able to mitigate the lighting coming into the homes. If it becomes a problem, where it is happening all the time, we will work with you on that. We will not be running the marina, either an adjacent marina or the Homeowners Association owners of the docks themselves will run the marina. We are not going to offer gas or food, there will just be docks and no marina services. We do not plan on selling slips. I understand some docks are deeded, we will be happy to maintain them. I will need to investigate the firetruck question by taking a look at it. We will be building in phases. The question about Miley Drive paving, my preference is to not use Miley at all. It may turn out that parking will need to be accessed from Miley, at that point it may need to be paved, I don't know how that works. Ms. Dale stated the drive needs to be dedicated to the County, if there is an active Association, typically two thirds of the residents have to vote to agree to inquire

Held

July 20, 20 16

about street improvement. It is up to the residents to get the street to a standard for the County Engineer to deem approvable. The reason I bring that up the residents and the developer may want to come to an agreement on splitting the charge or whatever is agreed upon. The County Engineer will require a certain thickness to the base, whether asphalt or concrete, there are standards that will be required before it would be dedicated to the Township for maintenance and improvements. Ms. Dale stated there is a process to work with the residence group, the developer and the County Engineer. Tony Steck stated there is no association and he didn't know how the residents would make that decision. Ms. Dale stated the streets were platted with each subdivision and kept private. How they are maintained is up to the residents and that is why the residents and the developer should come to an agreement on what is to be paid by the residents and by the developer.

Mr. Foster stated that if we end up using Miley, it is probably going to be on our dime to get Miley up to the County Standards.

Ms. Dale stated there was a question about fire hydrants, will any be changed or relocated. Mr. Foster answered we have to do what the Fire Department and the County wants, and are not going to relocate any fire hydrants on our own. Ms. Dale asked if the buildings would be sprinkled. Mr. Foster answered no because it is not a Building code requirement. Ms. Dale stated there were question on sidewalks. Mr. Foster stated they would be happy to put in a six foot asphalt walking path in the front of the property and eight foot wide if they want golf carts on it.

Greg Darr, 379 Florence came forward and was sworn in. He asked the price range of the units. Mr. Foster replied they would be starting at \$150,000 and up, adding not like the Retreat that was a thirty-five year old property that they improved and is not like this, being all new construction.

Mr. Stopar stated there was discussion about several other variances, the density variance for 64 units, are any other variances going to be required. Ms. Dale stated she didn't know. Mr. Stopar stated as of today, no other variances are needed.

Dennis Pamer stated that currently on Schrock Drive, there are telephone poles on the left that may cut off access to this road because it is basically a one lane street. How close is the property line to this street. Ms. Dale stated the only way to know for sure is to have a survey completed.

Mr. Foster stated his survey shows the width of the right-of-way is twenty-five feet. Mr. Pamer asked if this plan will be inside the poles. Mr. Foster stated he assumed the poles are in the right-of-way.

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

Mr. Smith motioned to recess into executive session for the purpose of deliberating the merits of the case. Ms. Roberts seconded the motion and the roll call vote was as follows: Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Mr. Smith – yes; Ms. Roberts – yes; The motion carried and the Board recessed at 10:02 p.m.

Mr. Smith moved and Ms. Roberts seconded the motion to reconvene. The roll call vote was as follows: Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Mr. Smith – yes; Ms. Roberts – yes; The motion carried and the Board reconvened at 10:19 p.m.

Mr. Bauer made a motion to continue the hearing until August 17, 2016 to bring back more details on the plan based on the information that the applicant shared, that they are prepared to have more details about the phasing, lighting, relocation of clubhouse & pool, ingress/egress to the site. All documents must be in to the Zoning Administrator by August 3, 2016. Ms. Roberts seconded the motion.

The roll call vote was as follows: Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Mr. Smith – yes; Ms. Roberts – yes; Motion passed 5-0.

Ms. Dale stated there will send a notice of the location of the August 17th continued hearing.

Signing of Decision Sheets

Mrs. Robertson asked if there were any corrections or modifications to the decision sheets. There were none.

- a. **BZA-2016-074 9198 E. Bayshore Road.** Request for a Conditional Use in accordance with Section 3.1.10.C.iii. to enlarge & convert an existing commercial building into a two-family dwelling with an Area Variance from Section 3.5.9 to allow more than one (1) residential structure on the property. **Michael Wright, Owner/Applicant.**

Ms. Grentzer moved to approve the Decision Sheet as presented. Ms. Roberts seconded. Voice Vote: All in favor. None opposed the motion carried.

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held July 20, 2016

b. BZA-2016-086 320 Second Street (Lakeside Laundry Rear). Request for a Use Variance in accordance with Section 7.8.2.C.ii to allow one (1) Mobile Food Cart within Lakeside gates for the 2016 season. Dan Dudley, CFO & COO of Lakeside, Owner/Applicant.

Ms. Roberts moved to approve the Decision Sheet as presented. Mr. Bauer seconded. Voice Vote: All in favor. None opposed the motion carried.

Approval of the June 15, 2016 Minutes

Mrs. Grentzer made a motion to approve the June 15, 2016 meeting minutes, Ms. Roberts seconded. All were in favor none opposed 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

Ms. Grentzer stated she will not be attending the next meeting.

Adjournment

Mr. Bauer moved to adjourn the meeting and Ms. Roberts seconded the motion. All in attendance were in favor and the motion carried. The meeting was adjourned at 10:24 p.m.

Cheryl Harmsen
RECORDING SECRETARY

Carol Robertson

Bob Bauer

John Wilson Smith

S. I. Milard

BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held _____ July 20, 20 16 _____

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