

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 101-48

Held

October 19, 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: Ms. Carol Robinson, Mr. Bill Smith, Ms. Sherry Roberts, Mrs. Loretta Grentzer, Mr. Brad Bauer and Alternate Joseph Fetzer. Alternate Sharon Michael was excused. Also present were Kathryn Dale, Zoning and Planning Administrator and Cheryl Harmsen, Administrative and Zoning Assistant. Visitors present were Peter Corrado, Patricia and James Thomas, Bruce Peterson, and Thelma Landrum.

Swearing-in of Member

Ms. Dale completed the swearing-in of Joseph Fetzer as a Regular member.

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 #2016-194 5648 E. Bayshore Road

Request for a Conditional Use to convert an existing Resort to a 4 unit Multi-Family Development in accordance with Section 3.1.10.C.iii and Section 4.3. as well as an Area Variance from Section 4.3.2.F to allow 3 existing units to contain less than the required 800 s.f. (624 s.f. proposed) of living space. Ronald & Thelma Landrum, Owners/Applicants.

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none.

Mrs. Grentzer moved to open the public hearing, seconded by Ms. Roberts. 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 previously approved in 2001, Conditional Use Resort property containing 3- 24' x 26' (624 s.f.) existing cottages/cabins, a barn and a single-family home, and designating it instead as a Multi-Family property. In 2004 they came back for a modification to the previous Conditional Use to add 29 RV camper sites. Only three cabins were installed. At this time they have no intentions to install any more cabins. They no longer want transients and desire longer term rentals of thirty days or more. The setback requirements have been met for these cottages. Separation of twenty feet or more has been met between cabins and the existing single family home is a significant distance away, near Bayshore Road. The cottages are thirteen feet high and the single family home is twenty four feet to the peak, all being below the thirty five foot maximum requirement. Three quarters of an acre or ten percent open space is required on this size of a property which they have ample space and it is delineated on the plan as being located at the rear of the property. They have the required two parking spaces at each cabin. Garbage storage bins are located behind the garage of the single family home and their plan is to continue that even with the multi-family designation. The owners and occupants of the property store trailers and miscellaneous items along the eastern property line and they have been made aware they will need to screen that area per the zoning code requirement. The lane currently being used to access this property will remain the same.

Thelma Landrum, applicant, came forward and was sworn in and attested the documentation provided to the Board was what she submitted.

Mrs. Landrum stated that her daughter wanted to build several cottages when this started but has since moved. She and Mr. Landrum do not want to manage transient cabins. Mrs. Landrum went on to describe the inside layout of the cabins. Her son inhabits one of the cabins and another couple rents the middle cottage.

Ms. Roberts asked for clarification on the location of the parking spaces. Mrs. Landrum replied there are two spaces for the first and third cabin and another space will be made for the middle cabin off the road. Ms. Roberts agreed there is ample space to provide the addition parking spot, even if its north and across the lane.

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, Mr. Bauer seconded the motion. All were in favor and the motion carried.

Mrs. Grentzer moved 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. Roberts – yes; Mr. Fetzer – yes; Ms. Robertson – yes; Mr. Bauer – yes; Ms. Grentzer - yes. The motion carried and the Board recessed at 6:52 pm.

Ms. Roberts moved and Mrs. Grentzer seconded the motion to reconvene. The roll call vote was as follows: Ms. Roberts – yes; Mr. Fetzer – yes; Ms. Robertson – yes; Mr. Bauer – yes; Ms. Grentzer - yes. The motion carried and the Board reconvened at 7:24 pm.

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-194:

With regard to Case # BZA-2016-194, being a request to convert an existing Resort to a 4 unit Multi-Family Development in accordance with Section 3.1.10.C.iii and Section 4.3. as well as an Area Variance from Section 4.3.2.F to allow 3 existing units to contain less than the required 800 s.f. (624 s.f. proposed) of living space, for the property located at 5648 E. Bayshore Road:

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 calls for this area to be "Recreational Commercial" with Medium-Density Residential across the street promoting 2-3 dwelling units per acre.
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 three units are not that much of a substantial change from the resort designation the property previously received. There are no exterior changes proposed that would detrimentally effect surrounding property owners.
3. The Conditional Use **will not** be hazardous or disturbing to existing or future neighboring uses because it will 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.
4. The Conditional Use **will not** be detrimental to property in the immediate vicinity or to the community as a whole for the same reason as number 3.
5. The Conditional Use **will** be served adequately by essential public facility and services.
6. The Conditional Use **will** have vehicular approaches to the property which **will** be designated so as **not to create** an interference with traffic on surrounding public/private streets or roads.
7. The property in question **will** yield a reasonable return or **can** be used beneficially without the variance.
8. The variance is **not** substantial.
9. 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.
10. The variance **would not** adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.)
11. It was not asked if the property owner purchased the property with knowledge of the zoning restriction.
12. The property owner's predicament **can** feasibly be obviated through some method other than a variance.
13. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance.

Ms. Roberts 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) (3) weigh more heavily to show that:

- a. The request is consistent with the Conditional Uses specifically mentioned in the "R-C" Recreational Commercial Zoning District and the intent and purpose of the zoning resolution; and

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- b. The applicant **has** proven that potential negative impacts of elements such as location, size and extent of facilities and operations, site design, traffic generation, site access, and potential impact upon public facilities will be adequately addressed, and
- c. Practical difficulty is sufficient to warrant granting the Area Variance requested, and
- d. There is 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 **APPROVED WITH THE FOLLOWING CONDITIONS:**

- 1.) That, the fence around the Alternate Vehicle Storage Area is installed within one (1) year from the date of this approval.
- 2.) That, all necessary Change of Use zoning permits are obtained from the Township for the conversion of the cottages/cabins to dwellings.
- 3.) That, the Change of Use and Certificate of Occupancy, received from the Ottawa County Building Department, for each unit is filed with the Zoning Office.

Motion Seconded by: Mr. Bauer.

Roll Call Vote was as follows: Mr. Fetzer – yes; Mr. Bauer – yes; Mrs. Grentzer – yes; Ms. Roberts – yes; Ms. Robertson – no. Motion passed 4-1.

The Chair announced this application has been approved and the applicant may pick up their permit following the November 16, 2016 meeting.

Ms. Harmsen introduced the second case of the evening:

Adjudication Hearing
Case BZA #2016-197
150 Plum

Request for an Area Variance to Section 3.1.5.D to allow for a 2nd story addition to be setback 1'9" from the western, rear property line (3' required). James & Patricia Thomas, Owner/ Bruce Peterson, Faith Construction, Agent.

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing, there were none.

The Chair asked the Zoning Administrator to an overview of the application. Ms. Dale stated the application is to construct roughly a 5'6" x 7'; 2-story addition (38.5s.f.) onto the NW, rear corner of the house. The addition will allow for an expansion of the 2nd floor bathroom and provide a storage closet. The structure is a nonconforming structure due to encroachment of the original house into the west rear-yard setback, south side-yard setback and east front-yard setback. The existing house is 11" from overhang to the western, rear property line. They are proposing to remove a shed roof over a portion of the structure to match the pitch of the existing house and will be shortening up the overhang making it is less nonconforming (better) by being 1'9" from the rear property line. The proposed addition would align with the existing house exterior walls. The total house encroachment is 42% of the required 3' setback. As the drawings show, the proposed addition would essentially "square-off" this area and would not extend any further than its current position. The northern side-yard setback is met with the addition according to the plans submitted and the area of work to be done does not exacerbate the lot coverage, the existing nonconformities or have any effect on the setbacks to the east or south, and is below the permitted 20% expansion allowed. Prior cases on other property in the vicinity have declared Ross Court as a front yard since it is the street-facing side of the property, however, on this particular property, prior permits issued to it have declared Ross Court to be the rear yard. This is the rational and reasoning for application & legal advertisement stating the street-facing side is the rear-yard. Looking at the physical property as well, the rear of the homes face the street and the fronts face the park.

Mrs. Grentzer asked for clarification regarding front and rear yard. Ms. Dale replied the rear of the homes face the street and the fronts face the park. Even though access to these properties is from Ross Court, these homes have a Plum Street addresses.

Bruce Peterson, agent for the applicants came forward, was sworn in and attested that the paperwork provided to the Board was what he submitted. Mr. Peterson stated the owners need a bathroom on the second floor and the sleeping porch has a rotting roof that will be removed and replaced with new materials and the pitch will match the existing, square off the corner and improve the overall appearance. Mrs. Grentzer asked the location of the existing bathroom. Mr. Peterson stated

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there is a three quarter bath downstairs and a toilet and sink upstairs, this would allow them to have a three quarters bath upstairs.

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

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

Mr. Fetzer moved to recess into executive session for the purpose of deliberating the merits of the case. Mrs. Grentzer seconded the motion and the roll call vote was as follows: Ms. Roberts – yes; Mr. Fetzer – yes; Ms. Robertson – yes; Mr. Bauer – yes; Ms. Grentzer - yes. The motion carried and the Board recessed at 7:41 pm.

Ms. Roberts moved and Mr. Bauer seconded the motion to reconvene. The roll call vote was as follows: Ms. Roberts – yes; Mr. Fetzer – yes; Ms. Robertson – yes; Mr. Bauer – yes; Ms. Grentzer - yes. The motion carried and the Board reconvened at 7:52 pm.

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-197:

With regard to BZA-2016-197 a request for an Area Variance to Section 3.1.5.D to allow for a 2nd story addition to be setback 1'9" from the western, rear property line (3' required).

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 but the proposed addition will match the character of the existing house and would be located no closer than the existing structure.
3. The essential character of the neighborhood **would not** be substantially altered by the variance and adjoining properties **would not** suffer a substantial detriment as a result of the variance because the proposed addition will match the character of the existing house and would be located no closer than the existing structure.
4. The variance **would not** adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.).
5. The property owner **did not** purchase the property with knowledge of the zoning restriction.
6. The property owner's predicament **cannot** feasibly be obviated through some method other than a variance because the lot is very small compared to even the average lot in Lakeside and there are very little other possible areas for improvement to the structure due to the current setback encroachments and limited space.
7. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance.

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) (3) (6) 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: Mr. Fetzer.

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

The Chair announced this application has been approved and the applicant may pick up their permit following the November 16, 2016 meeting

Signing of Decision Sheets

Mrs. Robertson asked if the Board had the opportunity to review the Decision Sheets presented for the following case and if there were there any corrections or modifications. There being none, she asked for a motion for approval of the decisions sheet.

Ms. Dale stated Mr. Mr. Smith, Ms. Roberts, Ms. Robertson, Mr. Fetzer and Mrs. Grentzer were present and seated for these hearings.

- a. **BZA-2016-156 408 Oak.** Request for an Area Variance from Section 3.1.5.D to allow for the construction of a decorative roof overhang to be located 8" from the northern, side property line (3' setback required). **Richard & Mary Price, Owner/Applicant.**

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Mr. Fetzter motioned to approve. Mrs. Grentzer seconded. All in favor, none opposed.

- b. **BZA-2016-165 Harbor Bay Estates (AKA Marblehead Estates) Lot 53A, Plat V (PIN# 0140469406735011).** Request for a Major Modification in accordance with Section 6.2.4 & 4.3. to a previously approved Conditional Use (BZA-2015-009) to replace 7 structures/14 condo units with 6 detached garage buildings containing 86 garage bays. **Michael Prosser, Prosser & Associates as Agent, American Title Agency, Inc. Owner/Applicant.**

Mr. Fetzter motioned to approve. Mrs. Grentzer seconded. All in favor, none opposed.

Approval of the September 21, 2016 Minutes

Mrs. Grentzer moved to approve the September 21, 2016 minutes and Ms. Roberts seconded a motion. Mr. Bauer abstained. Voice Vote: All were in favor. None opposed the motion carried.

Old Business

There was none.

New Business

There was none.

Other Business

There was none.

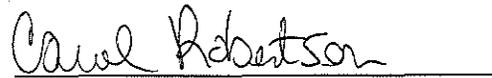
Reports and Communications from Members and Staff

There was none.

Adjournment

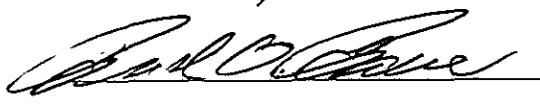
Ms. Roberts moved to adjourn the meeting and Mrs. Grentzer seconded the motion. All in attendance were in favor and the motion carried. The meeting was adjourned at 7:58 p.m.


RECORDING SECRETARY









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