RECORD OF PROCEEDINGS

Minutes of **Danbury Township Board of Zoning Appeals** Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held **February 17, 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 and Alternate Mr. Joseph Fetzer. Mr. John William Smith was excused. Also present were Kathryn Dale, Zoning & Planning Administrator, Cheryl Harmsen, Administrative & Zoning Assistant, Jeffery Stopar, Township Legal Counsel, and Marie Fresch, Court Reporter. Visitors present were Peter Corrado, Dr. Alice Randolph, Sherry Roberts, Ryan Cook, Pat Neurohr, George Wilber, Esq., Rita Kasper, G. Dufresne, Carolyn Adams, Dexter Adams, Cindy Kaple, Richard Rospert, Jim & Deb Babiasz, Keith McCullough, Jack McGrew, William & Bree Brown, Mary Ann Behlke, Brandon Lundgard, Steve Pesek. Julie Perkins, Esq., Mike Ratcliffe, Leo Monroe, Becky Kerzee, Chris Wiehn, Wilma Hastings, David Hanna, Charles & Susan Wilson, Sheldon Miller, Sharon Michaels, Riney Roberson, Don Kiser, Judy Kiser, Linda Neura, Mark Zollos, Sandy and Theo Rothermel, Don and Beth Kaltenbach, John Marsh, Charles & Susan Wilson, David Janik, Jim & Karen Merlitti, Gordon Wahlers, Russell Wahlers, Tod Kelly, Tom Dearth, and Cathy Dearth.

Swearing-in of Members

First item on the agenda was the swearing-in of Sherry Roberts as Regular member and Joseph Fetzer as a new Alternate Member. Even though Mr. Smith was excused, Mr. Fetzer was not seated on the Board right away since it was his first meeting.

2016 Election of Officers

Elections of Officers was then held. Mrs. Robertson asked for nominations for Chair: Mrs. Grentzer made a motion to nominate Mrs. Robertson as Chair. 2nd by: Ms. Roberts. Vote: All Ayes. Motion Carried. Mrs. Robertson asked for nominations for Vice-Chair: Mr. Bauer made a motion to nominate Mrs. Grentzer as Vice-Chair. 2nd by: Ms. Roberts. Vote: All Ayes. Motion Carried. Mrs. Robertson asked for nominations for Secretary: Mrs. Robertson made a motion to nominate Mr. Smith as Secretary. 2nd by: Mr. Bauer. Vote: All Ayes. Motion Carried.

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 #2016-002
8098 Rollie

BZA-2016-002 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 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 Mrs. 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 property is a corner lot which was platted pre-1959 and in 1987 a permit was issued for a home, which is located just shy of 6' from western property line. The 5' wide addition for a storage room leaves roughly 10" from the western property line. The appellants narrative statement indicates they have a medically necessary handicap ramp installed inside the garage to gain access into the home that has eliminated room for storage

of several items. As a result of being a corner lot, with a house that takes up much of the buildable area, the location for such a storage area is very limited.

Mrs. Grentzer asked Ms. Dale to explain why 10" verses 5' was not considered substantial and Ms. Dale replied that this addition did not extend the whole length of the home, just a small length at the back of the property and was created for a common sense reason to accommodate the handicap ramp.

Ms. Roberts asked Ms. Dale if she would hold the same opinion if the appellant would have asked for this variance before they built it, and Ms. Dale replied she would because this is a corner lot and there is no other place to put this additional storage, she would have had the same option.

Linda Neura, applicant came forward and was sworn in. Mrs. Neura examined the documents and attested they were the documents that she submitted.

Mrs. Neura stated because of the space that the handicap ramp in the garage takes up, there is no other place to store items.

Questions centered on what items were displaced because of the installation of the handicap ramp. Mrs. Grentzer asked Mrs. Neura for clarification on where items were stored. Mrs. Grentzer stated you have built the ramp, from my observation, it is a fairly low ramp, through the middle of the garage. You have a golf cart in there. Is it a double car garage? Ms. Neura said it is. Mrs. Grentzer went on to say, therefore, you have room for a car on the other side? Mrs. Neura agreed. Mrs. Grentzer asked what could you put into that shed that does not fit into the garage? Mrs. Neura stated they have a lawn mower, lawn equipment and tools needing to go into the shed. Also there is a furnace and instant hot water heater and we have to be careful what is put against it because of the gas.

Mr. Bauer confirmed with Mrs. Neura that there were access doors into the shed on either end.

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

Mr. Bauer 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. Bauer 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; Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer - yes. The motion carried and the Board recessed at 6:51 pm.

Ms. Roberts moved and Mr. Bauer seconded the motion to reconvene. The roll call vote was as follows: Ms. Roberts – yes; Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer - yes. The motion carried and the Board reconvened at 7:31 pm.

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-002:

With regard to BZA-2016-002 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 because it is over 80% of the required 5'side-yard setback.
3. The essential character of the neighborhood **would not** be substantially altered by the variance but the adjoining property **would** suffer a substantial detriment as a result of the variance for the same reason stated in #2 above.
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 had knowledge of the zoning restriction.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance because all of the equipment is presently being stored in the garage.
7. The spirit and intent behind the zoning requirement **would not** be observed and substantial justice done by granting the variance.

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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.

Ms. Roberts 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) (6) (7) weigh more heavily to show that:

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

Therefore, the Variance should be accordingly **DENIED.**
Motion Seconded by: Mr. Bauer

Roll Call Vote was as follows: Mrs. Grentzer – yes; Mr. Bauer – no; Ms. Roberts – yes; Ms. Robertson – yes. Roll call vote was 3 yes and 1 no. The motion passed.

The Chair stated the case has been denied. Mrs. Dale stated to Mrs. Neura that she would be in touch with her in the morning about the decision and what happens next.

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

Adjudication Hearing
Case BZA #2016-007
518 Erie Beach

BZA-2016-007 518 Erie Beach is a request for Area Variance from Section 5.8.1.B to allow a 12' x 25' in-ground pool in the side yard (3 sided front with no rear yard proposed) and 5' from the northern side property line (10' required), Tom & Cathy Dearth Appellants/Owners.

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 Mrs. 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 for the installation of a 12' x 25' in-ground pool to be placed 5' from the northern property line. This property has three street frontages and there is no rear yard as defined in the Zoning Code. Ms. Dale explained how pools are considered as an accessory use, but have more restrictive setbacks than a detached, 20' high, accessory building as well as an attached 35' high addition, both of which could be located 5' from this northern property line and would have a solid wall closer to the property line than the proposed pool.

Tom Dearth came forward, was sworn in and attested that the paperwork provided to the Board was what he submitted.

Mrs. Grentzer asked Mr. Dearth if he had options for the pool placement he stated that if they turned the pool sideways, it would be up against the fence he would not be able to pour a concrete walkway around the eastern side of the pool and it would then only accessible on three sides. Ms. Roberts asked if he wouldn't need a variance if it were rotated. Mr. Dearth replied no, they would still need a variance. Mrs. Grentzer confirmed that a number of family members would be using the pool if it were installed. Mr. Dearth stated there would be his kids and grandchildren.

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

Mr. Bauer 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.

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; Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer - yes. The motion carried and the Board recessed at 7:42 pm.

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. The motion carried and the Board reconvened at 8:00 pm.

The Chair asked Mrs. Harmsen to read the Findings of Fact for BZA Case #2016-007:

With regard to BZA-2016-007 a request for Area Variance from Section 5.8.1.B to allow a 12' x 25' in-ground pool in the side yard (3 sided front with no rear yard proposed) and 5' from the northern side property line (10' required) for the property located at 518 Erie Beach:

1. The property in question **will** yield a reasonable return or **can** be used beneficially without the variance.
2. The variance **is** substantial because it is 50% of the required 10' setback.
3. The essential character of the neighborhood **would** be substantially altered by 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 he **did** purchase the property with knowledge of the zoning restrictions but not in regard to the pool placement.
6. The property owner stated the predicament **can** feasibly be obviated through some method other than a variance.
7. The spirit and intent behind the zoning requirement **would not** 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) (2) (3) (6) (7) weigh more heavily to show that:

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

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

Roll Call Vote was as follows: Mrs. Grentzer – yes; Mr. Bauer – yes; Ms. Roberts – yes; Ms. Robertson – yes. Roll call vote was 4 yes and 0 no. The motion passed.

The Chair stated the case has been denied.

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

Adjudication Hearing
Case BZA #2016-009
2109 Tecumseh

BZA-2016-009 2109 Tecumseh is a request for an Area Variance from Section 3.5.7 to allow for the construction of a new home to encroach into the north, 20' required front-yard setback (11' proposed). Don & Judy Kiser, Appellants/Owners.

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. Dale asked Joseph Fetzer, Alternate to come forward and be seated as a Board Member for the purpose of having a full board.

The Chair asked the Zoning Administrator to give an overview of the application. Ms. Dale stated the application is for a new single-family home with and unenclosed porch planned to be 11' from the overhang to the front, northern property line and an attached garage 13' from the same front property line. The property is a corner lot in Mineyata-on-the-Bay Subdivision that was platted in 1925, thus is subject to the lot-of-record reduced

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setbacks. Ms. Dale reviewed the average setbacks along Simon, but explained those reductions were not automatically applied since none of the properties are addressed on Simon. There are homes to the north of this property sit closer than, or equal to, the proposed 11'. Ms. Roberts asked Ms. Dale why two variances were not applied for since the garage also encroaches. Ms. Dale explained that the measurement is taken from the closest point of the proposed house, which is what was listed in the notification. While the garage also encroaches, it is not the closest point and would be covered by the request since it is clearly shown on the plans what the applicants intentions are for the placement of the home.

Don Kiser came forward, was sworn in and attested that the paperwork was what he submitted to the Board. Mr. Kiser stated this will be their retirement home and because of the way the subdivision was set up, this porch will not be obstructing anyone's view. The views they worried about maintaining were along the Tecumseh frontage.

Ms. Roberts asked Mr. Kiser if he would be willing to apply for two separate variances, one for the garage and one for the porch and how he felt if the board decided to approve one but not the other. Ms. Grentzer and Ms. Dale stated they did not feel it was necessary for the reasons stated previously. Mrs. Grentzer clarified that they only intend to construct a single-car garage because one of the drawings they submitted shows a double. Mr. Kiser confirmed they only have space for a single-car garage.

Judy Kiser came forward and was sworn in and asked for clarification on the setback request that Ms. Roberts asked about. Ms. Dale reiterated that the measurement is taken from the closest point, in this case being the porch at 11' which encompasses the garage. Mrs. Robertson agreed that because it's all shown, the 11' request is the appropriate request to make. Mr. Kiser stated in response to Ms. Roberts's earlier question that he would wish not to split the decision between the garage and porch.

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

Mrs. Grentzer 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.

Mrs. Grentzer 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. Fetzer - yes. The motion carried and the Board recessed at 8:19 pm.

Mrs. Grentzer 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. Fetzer - yes. The motion carried and the Board reconvened at 8:39 pm.

The Chair asked Mrs. Harmsen to read the Findings of Fact for BZA Case #2016-009:

With regard to BZA-2016-009 a request for an Area Variance from Section 3.5.7 to allow for the construction of a new home to encroach into the north, 20' required front-yard setback (11' proposed) for the property located at 2109 Tecumseh:

1. The property in question **will** yield a reasonable return and **can** be used beneficially without the variance because the property is permitted to be used as a single-family residence amongst other uses listed in the "R-3" zoning district.
2. The variance **is not** a substantial encroachment into the north setback because of the difficulty of the lot shape.
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 reasons stated above in #2.
4. The variance **would not** adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.).
5. The property owners stated they **were not** aware of the zoning restrictions.
6. The property owner's predicament **cannot** feasibly be obviated through some method other than a variance because of the shape and size of the lot.
7. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance.

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) (6) (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. Roberts – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Ms. Robertson – yes; Mr. Fetzer - yes. All yes, the motion carried.

The Chair announced the application is approved and the appellants may pick up their permit, the day after the next meeting on March 17th, 2016

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

Adjudication Hearing
Case BZA #2016-010
5831 E. Harbor Road

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.

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. Bauer moved and Mrs. 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 construct 26 condominium units, 36 docks and a communal pool. Approximately 5.1 acres of the 40 acre tract consists of physical land while the rest of the property is submerged land. The owners are in a contingency contract with Rospert Enterprises to sell/purchase the property and part of the contingency is based on the outcome of the zoning decision for this request. Rospert Enterprises will be purchasing the entire 40 acres of which 7 acres are going to be carved out for the purpose of the Condominium Development. Approximately 3.5 acres will consist of physical land & 3.5 acres of submerged land. There are no plans at this time for the remaining 33.45 acres or 1.6 acres of physical land. The property is zoned "R-C" Recreational Commercial, where Condominiums are listed as a Conditional Use. Should the condominiums be approved, the undeveloped, remainder portion of land could come back later before this Board for an expansion of the Condominium use. Other Conditional Use potentials would be limited due to lot size minimums for some of those uses listed. The 1.6 acre remainder could also be used for any of the permitted uses listed for the R-C district and the Board was provided the listing of permitted uses in their packets.

Ms. Dale shared that the surrounding properties are mostly zoned "R-C", Mr. Whalers' property is zoned Agriculture and a small portion of property is zoned "R-3", High Density Residential. Based on the zoning density standards they could have 48 units, but they are proposing 26 units in 13 structures. The developer has the option to make the water side the front yard or rear yard effecting their setback requirements. Each building needs to be separated by a minimum of 20 feet and appears, according to the site plan to be met however, the overhangs are not shown. They are shown on the elevation drawings which indicated 1 foot overhangs therefore, the design may need to be adjusted to eliminate the side overhangs to meet the 20 foot separation requirement. When they are ready to put up a sign, a separate request must be made at that time when it is ready to be installed. Each unit contains 2,220

square feet of enclosed living space. Each building has two units and a total of 4,440 square feet per building. 10% open space is required however this cannot include the submerged land or the parking spaces. They are required to provide 0.697 acres of open space, they show 1.739 acres provided. The applicant shows the building height will be at the maximum height of 35 feet from grade and 3 stories. Each dwelling is required to have 2 parking spaces, which is met. A trash enclosure is shown on the plan by SR 163, it can be requested to be eliminated or relocated. There is no area set aside to store boats or other recreational type items. Street specifications need to be coordinated with the Ottawa County Engineers Office. Access points to State Route 163 needs to be approved by ODOT. The Danbury Township Fire Chief was asked to review this project, however, no comments were received.

Richard Rospert and Bill Brown came forward, were sworn in and attested the paperwork provided to the Board was what they submitted. Mr. Rospert reviewed their general intentions for the project that were previously stated, adding their intention is to have the proper building separation. No additional vehicle storage is in their plan. All roads will be private.

Mr. Brown stated they are currently working with ODOT to obtain their approval for vehicular access to SR 163. It is also the intention to require the individual owners have trash receptacles.

Mrs. Grentzer asked about the docks and Mr. Rospert replied they will be putting in 36 docks and are working with the Army Corp. of Engineering to obtain approval. Mr. Brown stated they have hired a third-party company to do a wetlands study and will be presenting that report to the Ohio Department of Natural Resources.

Mrs. Grentzer asked what their intentions are if they do not get the wetlands approval, and Mr. Rospert stated they would most likely still move forward with the condominiums without the dock plan.

Ms. Roberts asked if the financing was in place. Mr. Rospert stated the financing is available in phases and Mr. Brown stated they will not start all 13 buildings at once and planned to construct one building at a time since the Ottawa County Building Department permits are good for one year.

Ms. Robertson stated Mr. Rospert and Mr. Brown could return to their seats adding the Board will allow those who wished to speak to come forward in the order of the sign-in sheet.

Mrs. Robertson named Jim & Karen Merlitti and they stated they wished not to speak. Mrs. Robertson called then upon Gordon & Russell Wahlers.

Gordon & Russell Wahlers came forward and were sworn in. Gordon Wahlers stated they are not in favor of this development and rezoning. He read from a prepared statement, that he was attending the hearing with his son Russell who submitted 9 photos which became Wahler's Exhibit #1 depicting the view from their property northward over the property in question. Four pages of a written statement which became Wahler's Exhibit #2 and was what Gordon continued to read from. Gordon gave a history of his farm at 6154 East Harbor Road where he lives at this address and also lives at Otterbein Retirement Home, both on a part time basis. Starting in March, Gordon stated he will be at 6154 East Harbor Road on a full time basis. Gordon added he made an offer to purchase the property to Mr. Brown but never received a reply. With this project, he would lose his views of East Harbor.

Russel Wahlers wished to speak and submitted paperwork, was entered into the record as Wahlers Exhibit #3 which consisted of 8 Figures, some repeat photos submitted in Wahlers Exihibit #1 and wetland information. Russel stated he was born in this area and plans to retire here. Aesthetically, this project will be detrimental to the Township and it's one of the last visible shorelines on the peninsula, the traffic will be detrimentally affected with an increase of traffic and thirdly, there is an environmental issue with this project. Figure #3 in Wahlers Exhibit #3 is a satellite photo showing the high density development that has taken place along the shoreline of Danbury Township. Figure #4 and #5 shows how the development will obscure everyone's view. The traffic is very congested and this project will exaggerate the existing traffic congestion problem. Figure #6 & #7 show the wetlands which are protected. In the past when Bob Ahrens attempted to develop these wetlands, it was denied. The proposed docks look to protrude 400 feet into the wetlands and the

Township should try to preserve the natural resources. There is also an 8 foot walkway proposed to be placed over the wetland area.

Sheldon Miller came forward and was sworn in. Gordon Wahlers stated that Sheldon is the framer that works his farm. Mr. Miller stated that moving farm equipment will be more difficult with the added traffic congestion and the view of East Harbor would be eliminated.

Bree Brown came forward to be sworn in and stated Mr. Wahlers doesn't own this waterfront property therefore doesn't have the right to control the property. As for this property, it is zoned Recreational Commercial and if this project doesn't get approved, there are other allowed uses for this property that would be considered.

Ms. Dale read the list of permitted uses in the "R-C" zoning district.

George Dufresne came forward and was sworn in, and stated he is from Come Sail Away area; it was determined he was speaking at the wrong hearing and wanted to comment on the next case.

There was no one else with standing who wished to testify. There were no further questions of the applicant.

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

Mr. Bauer 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; Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Bauer – yes; Mr. Fetzer - yes. The motion carried and the Board recessed at 9:51 pm.

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. Fetzer - yes. The motion carried and the Board reconvened at 10:20 pm.

The Chair asked for a motion to continue this hearing so the applicant can submit documents that describe the scope of the phases for construction and dates of each phase. This information needs to be submitted by March 4th to be on the agenda for the March 16th meeting. The roll call vote was as follows: Mrs. Robertson – yes; Mr. Bauer – yes; Ms. Roberts – yes; Mr. Fetzer - yes. The motion carried and the case continued.

The fifth and final case of the evening was introduced by Mrs. Harmsen.

Adjudication Hearing
Case BZA #2016-011
5401 Maritime Shoreway

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 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.

Mr. Bauer motioned to open the public hearing, Mrs. Grentzer seconded. 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 construct 28 condominium units, 14 duplex buildings, 35' high from grade to the peak and connected via mechanical/storage rooms and staircases. The plans also show 4 existing hotel suites to be converted into the condominium designation, construct a restaurant and communal pool and deed 32 docks to the condominium units with 14 docks available for restaurant. There are 52 boataminium slips in the center of this development site that are deeded to lots in West Harbor Marina Boataminium. Each unit consists of 2 bedrooms & 2 baths, open living room off the kitchen, and a 2 car garage on the ground level with the exception of the former marina building that was converted into a

hotel, parking is provided in the parking lot. The site plan delineates where parking will be provided for each use.

Ms. Dale shared that the site plan also indicates that this will be developed in phases. The first Phase includes the hotel conversion to Condominiums. The second Phase indicates that the construction of the pool, restaurant and 7 buildings (14 units) along the east wall of the marina will take place. The third and final Phase would include the remaining 7 buildings (14 Units) along the western side of the marina. A permit history was given on the marina portion of the property. Surrounding properties are zoned "R-C", "R-3" and Catawba Island properties, zoned "R-5" and "C-4" under Catawba's zoning.

Ms. Dale went through the Chapter 4.3 Zoning Code Requirements for Condominiums sharing that the applicant is allowed 34 units and they are proposing 32 units. The lot width to depth ratio of 1 to 5 is satisfied. The existing lot of record language does not apply to this situation. The front yard setback is shown at 70' from the eastern property line, where 35' is required for the condominium units, 70' is also satisfied for the proposed restaurant and bar. The 10' setback on each side and a rear setback of 25' is satisfied. All the buildings are tied together therefore the 20' building separation does not apply. The code does not specify square footage requirements on units over two stories or minimum ground level square footages, therefore, it is up to the Board to decide if what has been presented is approved or not. Each unit contains 808 square feet of living space and the overall total square footage per unit is 2,083 sq.ft. when the covered deck and garage is included. The building height is proposed to be the allowed 35'. The 10% open space requirement is just over ½ an acre and is shown on the site plan. Each unit is required to have two parking spaces which being satisfied with the two car garage provided below each unit. One (1) space for every 1½ docks belonging to the West Harbor Marina Boataminium requires 35 spaces and it is shown on the plan where those spaces will be reserved. Restaurants require 1 space for every 80 square feet, therefore 38 spaces are shown on the proposed plan. Ten (10) additional spaces are shown to service the 14 docks reserved for the restaurant & public use. In total 91 spaces are proposed. Trash receptacles are shown at the entrance of the development site and staff recommends the Board requires they be in an enclosure. Alternate Vehicle Storage is not identified on the plans. The property is currently accessed via Maritime Shoreway from Buck Road and is a private street and is not maintained by the Township.

Ms. Dale stated she received a Letter from the Ottawa County Sanitary engineer's office 02/16/16 stating sufficient sewer and water utilities to support this proposed project. This letter was entered into the record as Township Exhibit #2. She also read verbatim the review letter Danbury Township Fire Chief Kahler submitted this afternoon prior to the hearing. The letter was entered into the record as Township Exhibit #3. Chief Kahler recommended the applicants work with a licensed structural Engineer and himself to ensure the concrete bridge decking will hold emergency vehicles. Additionally, there is a narrow fire lane issue and blockage of access to a hydrant.

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

Jeff Stopar clarified for the record that Exhibit #1 is the applicants BZA application that was submitted and provided to the Board as part of their packet received prior to the meeting.

William & Bree Brown came forward to be sworn in and attested the documentation provided to the Board was what they submitted. Mrs. Brown stated this property is zoned "R-C" and is operated as a commercial marina, which was how the property was used prior to their ownership. She explained that the operation includes boat storage, hoisting, boat work, charter fishing, and nightly rentals under the hotel. Early this year zoning verification was obtained, that states a hotel/motel could be placed on this property with a higher density should this not be approved and without needing a Conditional Use approval from this Board. She stated they are looking to restrict themselves by making this application that would permit a less dense development. Options have been considered and the decision will give us the information we need to move forward with the structure of the financing needed. If the plan were approved it would guarantee no fish cleaning, and boat storage – at least through most of the year, and no transient visitors. She stated they would rather sell units and

not be in the hotel business. Mrs. Brown clarified that there would be no additional storage available other than the proposed personal garages shown in the building designs.

Mrs. Grentzer asked for clarification on where the current hotel is located and verified with Mrs. Brown that it is the 2-story structure on the north end of the property. Mrs. Grentzer asked about the size of those units, and Mrs. Brown replied they are 2 bedroom, 2 bath hotel units. Mrs. Grentzer asked if those would remain as a hotel. Mrs. Brown said they would, unless this request is approved, then they would sell them as condominium units. Mrs. Grentzer confirmed that the building would remain as it is now, and both Mr. & Mrs. Brown confirmed that it would.

Mrs. Grentzer asked what a Boataminium is. Mrs. Brown stated it is a condominium version of selling a specific dock slip into private ownership as opposed to renting a slip. Mrs. Grentzer asked for clarification about the proposed structures projecting over water. Mr. Brown approached the Board and pointed out that they were planning on having the decks of the buildings along the east hang out over the water, and then the structures to the west would hang out westward and the concrete drive would not be affected by the structure construction. Ms. Grentzer thanked him and that was what she wasn't understanding, she thought the buildings were going over the concrete drive. Mrs. Grentzer stated that she visited the site, but did not notice the concrete drive the Fire Chief was concerned about, but sees it now on the plan. Mr. Browns pointed out on the plan that the center docks belonging to the West Harbor Marina Boataminium and the docks along the western wall of the marina will remain as they are, the eastern docks will come out. Mr. Bauer asked about how the docks along the east will be reconfigured and Mr. Brown pointed as how they will be turned sideways along the front of the unit deck.

Mrs. Grentzer clarified that the units in the mobile home park would then be behind the proposed buildings, with the parking lot remaining where it is, separating them from the new buildings. Mr. Brown confirmed that was correct. He also stated they do not plan to continue storing boats on the property.

Ms. Robertson asked when they received the zoning verification letter to allow them to build a hotel, Ms. Brown replied the verification is dated January 8th 2015. Mr. Brown stated the hotel plan is essentially the same plan they have before them, but could be a higher density situation and would not require BZA review. Mrs. Robertson asked that the financing would be different for a hotel vs. a condominium development and that's what they are asking is what they can go so they know what type of financing they can get. Mr. Brown said yes. Mrs. Robertson said the hotel would always be rentals then, and Mr. Brown confirmed.

Mr. Stopar stated to Mr. Brown, going forward, the reason you are considering both, is to move forward with your financing request. Mr. Brown agreed. Ms. Brown stated that the condominium development would enhance the surrounding area more than hotel project. Mr. Brown stated there is already a lot of traffic back in this area due the high density and having a hotel would only increase that more so than condo's where people would stay for longer periods of time and make fewer trips in and out.

Mr. Stopar asked if a traffic study is being done, Mrs. Brown replied she didn't believe it would be necessary because they believe with the elimination of the charters, dock rentals and current hotel units, the traffic count should go down and will be a different type of traffic with owners coming in not strangers.

Mrs. Grentzer asked to clear her mumbled mind that if this plan isn't approved, then they would leave the hotel units currently on the property as hotel and make these same proposed buildings as a hotel. Mrs. Brown stated they would be pushed together more and there would be 8 buildings along the east wall of the marina instead of the 7 shown for condo's. Mrs. Robertson asked Mrs. Dale if they could do that and get approval. Mrs. Dale stated that as long as all the underlying zoning resolution requirements were met, yes.

Mr. Brown stated that he does have approval from the Fire Chief for the hotel, so he doesn't understand what has changed his opinion. Mrs. Grentzer said, but tonight you are looking for this approval of condominiums. Mr. Brown agreed.

Mr. Stopar asked Mr. Brown to clarify on what the approval was from the Fire Chief. Mr. Brown stated the Chief had signed off on the drawing submitted to him. Mr. Stopar asked him if he would enter that into the record. Mr. Brown said he would. Mr. Stopar proffered that Mr. Brown had had some sort of prior conversation with the Chief and Mr.

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Brown said he had met with him at the site about a year ago and went back to his office where he then signed off on the plan. Mr. Stopar asked if it was in regards to this condo plan, Mr. Brown said no, it was for the hotel layout. Mr. Stopar asked if the zoning verification could also be entered into the record since it had been referred to quite a bit.

Meeting went off the record while Mrs. Harmsen went to make copies of the exhibits the applicants were submitting because it was their only copy.

Back on the record, Ms. Dale stated the zoning verification letter dated January 8th, 2015 will be labeled as Applicant Exhibit A and the hotel plan with the Fire Chief's signature on it which will be Applicant Exhibit B.

Mr. Stopar stated that the time is 11:15p.m. with respect to the record, and how long everyone has patiently waited, and with respect to due process, we are going to start allowing people with standing the time to speak, but at midnight we will stop to discuss a continuation of the hearing to another day, otherwise we will be here until the middle of the night.

Mrs. Robertson stated she would begin with who was signed-in first on the sign-in sheet.

Dr. Alice Randolph and Sherry Roberts came forward together and were sworn in. They stated they wished to speak separately. While Dr. Randolph started, Ms. Roberts distributed Dr. Randolph's exhibits to be entered into the record. Dr. Randolph stated she is not here to debate a hotel vs. condominiums and is here to share their concerns as owners and associations. She stated she is the President of West Harbor Landing Boataminium which is a 96 member condominium association, and is the President of West Harbor Group, which oversees 3 of the groups that make up part of the West Harbor Communities. Those groups included are the West Harbor Landing Boataminium, West Harbor Marina Boataminium and West Harbor Cove & Marina which includes over 300 residents. Dr. Randolph stated she had the Directors of those Associations with her at the hearing as well.

Dr. Randolph clarified that she would share her concerns by addressing the decision criteria and they are not here in support of the proposed development plan. Dr. Randolph stated this project is not enhancing the land use plan, it is not harmonious with the existing dwellings because these are 3 story structures next to single story manufactured homes, there is no separation or green space between each unit and are very crowded, they are around 800 square feet verses 1,200 to 2,000 square foot existing single-family dwellings, there are only two trash receptacles for these 32 dwellings and a restaurant and bar, and required parking spaces have been under-estimated. For the restaurant and bar, the concerns are crowd noise day and night on the proposed large outdoor deck that is only 100 feet from her home. Dr. Randolph questioned the use of boat hoist going into the parking area where vehicles may be parked. Mr. Bauer stated that similar hoists are provided at many other marinas in the area and disagreed that it would create a problem. She also touched upon drainage, run-off, utility connections and internal circulation, assuring that guest docks are clearly marked so guests to not occupy boataminium spaces if those residents leave for an afternoon. She questioned what they were told in a private meeting with the applicant, prior to the hearing, about whether the restaurant/ bar was part of the condominium proposal or not, and if the pool would be able to be used by the condominiums or not. She stated she agrees with requiring an engineered study on the concrete drive around the marina because it collapsed a few years ago and was repaired and the developer of this area limited the weight on that concrete drive prior to selling the property to the Browns. Some of the dimensions are missing from the plan and Mr. Brown has not finished other projects where the Ottawa County Building Permits have expired. She indicated there are easements in place over the parking lot that also need to be addressed. Mrs. Dale stated that the record will show Dr. Randolph's statements on 15 pages and a public records request from the Ottawa County Chief Building Official that were provided at the start of her presentation will be entered as Randolph Exhibit #1.

Sherry Roberts, 5465 Constitution, came forward and was sworn in and stated the Board just heard a very comprehensive reason from Dr. Randolph, with their own decision criteria on why they should deny this request. Ms. Roberts stated they have heard more than once from the Brown's that if this plan isn't approved, they will build a hotel and she encourages them to do so because she believes it will be empty anyway. Ms. Roberts said the only reason they should turn this down is because it is not compatible with the surrounding

neighborhood and this project should not be compared to the condominiums across the way in Catawba. She stated that when people purchase property they depend on their deed restrictions and she believes the Brown's bought a marina and that's what it should stay. Another thing she wanted to talk about is the restaurant/ bar, and while she understands they could do that, they included it in the plan even though it probably didn't need to be shown. Her concern on this is for the crowd noise from the 2,000 square foot outdoor deck at the restaurant day and night which is only 100 feet away from my property and will be a nightmare.

Mr. Stopar asked Ms. Brown if she wanted to reply, Ms. Brown stated she would prefer everyone speak first and then they respond to all the objections at once. Ms. Roberts spoke up and suggest that since there are other attorney's present and if no one in the crowd disagreed, to allow the attorney's to speak since they have been paid a lot to sit for a majority of the evening. Mrs. Robertson explained that if that's what the group preferred she would do that and deviate from the list.

Attorney Julie Perkins from Kaman & Cusimano came forward and stated she is there to represent West Harbor Marina Boatiminum. Ms. Perkins stated there are 3 primary concerns. The first about limiting the timeframe of construction, the project starting and not being completed based on history and feel a limit needs to be placed on the allowed construction time and supports Ms. Dale's recommendations regarding the timeline in the Staff Report. Secondly, would-be access to the boat slips needs to be protected during construction and finally the parking needs to be sufficient. There are parking easements that exist and ask that they are delineated. These things this organization is asking the Board to consider of high priority in addition to the other concerns already addressed.

Attorney George Wilber came forward. Mr. Wilber distributed the letter he would be reading from. Mr. Wilber stated he is representing West Harbor Cove & Marina MHP to the east of the subject property, also the West Harbor Landing Boataminium Association and The West Harbor Group. He stated the site plan should accurately depict and identify what is being proposed. Mr. Wilber asked if he could see the Exhibit that had the Fire Chief's signature. Mr. Wilber pointed out that some of the boat slips at the top of the page were erroneously referenced and should be West Harbor Landings Boataminium. When those were created, an easement was established for access to those boat slips and the plan does not accurately indicate that easement. He distributed West Harbor Landings Boataminium Plat 22a & 22c. Mr. Wilber stated it doesn't show either an easement for 11 parking spaces dedicated on the east side of the Marina for the West Harbor Landings Boataminium. Another plat he presented shows a cul-de-sac at the end of Maritime Shoreway that is not owned by West Harbor Marina and their property lines would actually go around that cul-de-sac. The point he made with the hotel plan that has the Fire Chief's signature on it is that the cul-de-sac is shown in that plan, but not the one presented to the Board for the condominium proposal. Mr. Wilber stated that site plans should accurately reflect what is occurring and based on these inconsistencies, the plans should be denied. He touched upon whether or not the restaurant/ bar and pool is part of the condominium because if it's not part of the condominiums, then more parking should be required for a public pool.

Mrs. Grentzer confirmed that everything he just stated was included in his handout. Mr. Wilber stated it was. Mrs. Brown asked for a copy of it following the meeting.

Ms. Dale clarified for the record that what Mr. Wilber has submitted are as follows:

Wilber Exhibit 1:	His Letter & Statements
Wilber Exhibit 1-A:	West Harbor Landings Boataminium Marine Condominium Plat 22A & 22C, with easements highlighted.
Wilber Exhibit 1-B:	Volume 366 Page 0152 thru 0181 Deed Easement & Declaration Covenants & Restrictions between West Harbor Cove & Marina, Charter Captains Marina, Buck Point Limited Partnership and West Harbor Group.
Wilber Exhibit 1-C:	Volume 22, Page 13 Plat of Cedar Cove Acres

No other attorneys were present, or acknowledged that they wished to speak.

Brandon Lundgard came forward and was sworn in. Mr. Lundgard presented a copy of a survey titled Charter Captain's Marina, LLC that also shows an easement which appears to be the same easement Mr. Wilber submitted. He stated he received this plot plan from the zoning department and wanted to clarify that the easement is to the west of Ash Street, not on Ash Street as Mr. Brown has shown on his site plan and he wants to make sure that their 11 spaces are incorporated into the plan. Mr. Lundgard stated Mr. Brown is using their easement space for his own personal use and he has the deed that goes along with what he is presenting which clearly states the parking easement in on the Brown property.

Mrs. Brown spoke up and stated that when this came to light and they became aware of it, which was after they submitted the application to the BZA, they have prepared a new drawing to accurately represent the location of this particular easement and the 11 parking spaces. Mrs. Brown stated they were going to wait to submit this when they rebutted the objections, but are thinking it might be a good time now to eliminate that concern.

Ms. Roberts questioned if that would require a new notice since it's a new plan. Mrs. Brown stated it is only being used to show the easement Mr. Lundgard was talking about. Mr. Lundgard said it's not just about the parking but the easement access. Mrs. Brown stated they actually took a unit out to provide proper access. Mr. Lundgard said it appears just briefly looking at it that the Browns are trying to use this space for their own purposes and that West Harbor Landings Boataminiums have exclusive use to it.

Mrs. Grentzer questioned if this was a revised plan. Mr. Stopar spoke up and said he wanted to make the record clear and before they get to far ahead, Mrs. Brown just presented a drawing prepared by Mayer Architectural Group with SP-1 in the corner. Mrs. Dale interrupted and said she wanted to go back a little more and enter into the record Mr. Lundgard's Exhibits, which will be Lundgard Exhibit #1, which is Charter Captain's, LLC, drawing #2, sheet 1 of 2, by BEC Associates dated April 5, 2012 with a survey seal, essentially a survey of the property. Then there is Lundgard Exhibit #2 which is Vol. 366, Page 175 describing an easement description titled *"Exhibit 3a"*. Mrs. Dale ensured him we would provide him a copy in return.

Mrs. Dale stated for the record that we then have Applicant's Exhibit C, which is a revised site plan of the proposed condominium development showing revised parking layout, a cul-de-sac at the end of Maritime and a reduction of 2 condominium structures. Ms. Roberts asked if there were 52 parking spaces for the West Harbor Marina Boataminium. Mrs. Dale said she didn't know just looking at it for the first time. Ms. Roberts yelled out that if we were going to accept it as evidence then we should know what it is showing. Mrs. Dale said what the question on the floor is, is where are these 11 spaces that are supposed to be reserved, to her this is a revised plan that no one has seen, and she's not comfortable speaking about it. Ms. Roberts argued that Ms. Dale just had. Ms. Dale said she is trying to describe what has been given to her as a new exhibit because there is no date or title on it that differentiates what was initially presented in the application. Ms. Roberts stated with all due respect, she stated there were 11 parking spaces mentioned from the prior easement discussion, she is now specifically asking if 52 spaces are shown for the West Harbor Marina Boataminium. Mr. Brown said no because they are not required or deeded. Ms. Roberts disagreed.

Mrs. Brown spoke up and clarified that they submitted this plan not as a revised application right now, but it is submitted to show they are willing to acknowledge the 11 parking spaces for the Landings and to address the easement concerns that had been raised regarding that. Mr. Lundgard stated they are using the easement for their own parking though. Mr. Brown said they do own the property and can use the parking lot. Mr. Lungard said he has another plot that shows the West Harbor Marina Boataminiums has about 2/3 of the parking lot in an easement, but it appears to him Mr. Brown is trying to follow just the zoning requirements, but he's still short for the Marina and trying to put their spaces in the easement for the Landings.

Mr. Stopar interjected and stated we now have 2 exhibits enter by Mr. Lundgard and a new plan presented by the applicant in an attempt to address some of the easement concerns, and pointedly asked the applicant how this plan is supposed to be represented and if it is being presented as a new site plan because otherwise we need to refer to the code procedurally on how that should be handled. What it includes or doesn't isn't the best way to

RECORD OF PROCEEDINGS

Minutes of **Danbury Township Board of Zoning Appeals** Meeting

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Held **February 17,** 20 **16**

use our time right now, it's a public record and people can look at it, but we still don't know what the applicant is doing with this other than submitting it for the purpose of discussing this small easement involving 11 parking spaces. Mr. Stopar asked Mrs. Brown if that was accurate. She stated it was.

Mr. Lungard pointed out on his Exhibit 1 where the West Harbor Marina Boataminium parking easement is located and Ms. Roberts interjected that that space should show 52 parking spaces for them and not for the rest of the development because that is a private agreement and supersedes the Township code. Mrs. Dale asked Mr. Lundgard to share where he got these documents from. He stated at the Courthouse in the Recorders office, Engineer's office and Auditor's office and zoning office – Mrs. Dale corrected and said Regional Planning office? Mr. Lundgard said yes – that was the office.

Mr. Stopar recommended since it was now 12:15 a.m., he suggested at this time the hearing needs to be continued. Mr. Bauer made a motion to continue this hearing until March 17, 2016 and Mr. Fetzer seconded the motion. All Ayes.

Approval of the December 16, 2015 Minutes

Ms. Roberts made a motion to approve the December 16, 2015 Meeting Minutes, Mr. Bauer seconded, and the motion carried. All were in favor and the motion carried.

Signing of Decision Sheets

There was none.

Old Business

There was none.

New Business

There was none.

Other Business

There was none.

Reports and Communications from Members and Staff

Ms. Dale reminded the Board of the Zoning training on April 12th, 2016

Adjournment

Mr. Bauer 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 12:20 a.m.

Cheryl Harmser
RECORDING SECRETARY

Carol Robertson

Loretta Grentzer

BOARD OF ZONING APPEALS