

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

August 17, 2016

The Danbury Township Board of Zoning Appeals was called to order at 5:00 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. Brad Bauer, Mr. Bill Smith, Ms. Sherry Roberts, Alternate Joseph Fetzer and Alternate Sharon Michael. Mrs. Loretta Grentzer was excused. Also present were Kathryn Dale, Zoning, Planning Administrator and Cheryl Harmsen, Administrative and Zoning Assistant, Jeffrey Stopar, Township Legal Counsel, and Marie Fresch, Court Reporter. Visitors present were William & Bree Brown, Dr. Alice Randolph, George Wilber Esq., John Coppeler Esq., Jim Bemer, Kelly Bemer, Elizabeth Pence, Jim Pence, Lee French, Deb French, Anthony Zelms, Cindy Kaple, Gene Kaple, Sandy Rothermel, Ron Dombrowski, Mary Ann Behlke, Carolyn Adams, Jason Zimmerman, Ross Eberlein, Esq., John Corsi, Mike Kerr, Atty. Ben McKelvey, Esq., Lazlo Tromler, Bree Tromler, Joseph Caner, Jim Meyer, Bill Maenner, Mike Brown, Cheryl Ulmer, Joel Brucken, Angela Brucken, Terry Tomlinson, Jim Barney, Kevin Sibbring, Daniel Dudley, Linda Huber, Doug Huber, Kurt Geisheimer, Karen Mader, Sarah DePerro, Thomas Jones, John Starcher, Steve Bauman, Bohdan Czepak, Bill Drackett, John Feick, Bruce Bennett, and Glen Becker.

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

The Chair asked Mrs. Harmsen if all the documents relating to the cases 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 for a motion to amend the Agenda, moving item F (Lakeside case) into the second hearing slot after the withdrawal announcement. Ms. Roberts moved to amend the agenda and Mr. Smith seconded the motion. All were in favor and the motion carried.

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

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

Continuation from 07.20.16:

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 stated the public portion for this case was opened and closed at the previous hearing July 20, 2016. Members present were myself, Ms. Grentzer, Mr. Bauer, Mr. Smith and Ms. Michael. Ms. Roberts recused herself from the Board for that hearing and Ms. Grentzer is excused this evening, therefore 4 members will be voting on the matter. William "Bill" Brown, Bree Brown, Dr. Alice Randolph, Sherry Roberts, and Steve Pesek were sworn in at that hearing. Attorney George Wilber also testified during that hearing. All those who spoke are still under oath. All testimony provided at the July 20, 2016 hearing, as well as exhibits, are carried over and still part of the record. The hearing was continued to allow the applicant to present more details on the plan related to the boundary limits of the condominium, trash and other details discussed in the July hearing. The Board asked that the applicants submit documentation by August 3, 2016 and this was satisfied on August 2, 2016. Ms. Dale has provided the Board with a Staff Report Addendum, which includes the applicant's submission and suggested modification regarding the conditions as a result of what has been presented. The applicant will be given the opportunity to present these modifications and cross-examination will be allowed, related to this new information only. The applicant will be given the last opportunity to speak.

Ms. Roberts recused herself from this hearing.

Ms. Robertson asked the applicants if the documentation before the Board is as they submitted and they attested that it was.

Ms. Dale stated the new plan, submitted August 2 for tonight's hearing, will be identified as Applicants Exhibit #1 because the previous documents submitted with the application are identified as Township Exhibit #1.

Mrs. Bree Brown stated that Attorney John Coppeler is here tonight representing them in case he would need to speak on their behalf since he was not at the previous hearings.

Mrs. Brown stated the revised plan was submitted pursuant to the board's request. The initial application showed the intent to develop the entire parcel, but we were asked to provide additional detail for the first phase of the project. As far as the setbacks go, we are looking at the entire parcel, and for Phase #1 which is the four-unit building, clearly meets or exceeds the setback requirements.

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The plan shows there are four docks that will be deeded to the condos. Mr. Smith stated those four docks are labeled on the plan as "PH" dash one, two, three and four. Ms. Brown agreed and added that helped satisfy the square footage requirement. The four parking spaces are shown by the condo units and four more parking spaces are shown within that footprint for Phase #1. The trash receptacles are placed in front of the four parking spaces by the condo units. The plan also shows potential future development. Mr. Smith stated the first plan included a pool. Mrs. Brown replied they do not plan on including a pool in phase one of the project, although it will be part of the final plan. The green space requirement is met with 3,800 square feet. Mr. Smith asked Ms. Dale if a plat of the property is required and new legal descriptions. Ms. Dale deferred to the applicant and their attorney since his question was a platting and ownership question as opposed to a direct zoning related question. Ms. Dale did state that ultimately what shows up on the Auditor's website and records are 4 little boxes over the building depicting the unit that someone will own, not the whole area intended for Phase #1. Ms. Brown replied that Phase #1 will be platted showing the individual condo units and legal description of the property and the green space will be part of that because it is common area. Mr. Smith asked if it would be possible to provide the plat prior to final sign-off. Ms. Brown stated that if this plan was approved, they will have to file a plat for Phase #1 with new legal descriptions. This is a requirement to be able to sell the units.

Ms. Dale shared that she would defer to the applicants regarding the dumpsters that were brought up at the last meeting in the cul-de-sac area, and that she had provided in the staff report addendum the response she had been provided. Parking has been an on-going issue and we know from the last meeting, civil litigation is in-process regarding the parking easements. The staff report addendum includes suggested modifications regarding the conditions as a result of what has been presented. Ms. Dale shared that the original staff report had provided 8 conditions for the Boards consideration and in the addendum she has eliminated condition #6. Deadlines have been modified to accommodate the continuation of the hearing to tonight, specifically for marking the parking spaces and the docks reserved for these units. Also modified is the date for the Alternate Vehicle Storage plan, if provided, needs to be submitted before the next meeting. Mr. Smith asked if they planned on an Alternate Vehicle Storage area. Ms. Brown answered, not at this time.

Ms. Brown stated as far as the current litigation, none of that effects this application. These 4 units and Phase #1 area is not the same area that the litigation is over. She stated the commercial dumpsters are in the area under question with the litigation, but because they are showing private receptacles, they do not believe that should have an effect on the request before the Board. Mr. Stopar asked if there was any testimony, related solely to this hearing and the testimony. Ms. Robertson stated only new information can be presented.

Mr. Smith motioned to open the floor for anyone with standing who has new testimony, seconded by Mr. Bauer. All were in favor and the motion carried.

Dr. Alice Randolph, 5465 Constitution, came forward and was previously sworn in. Ms. Dale stated the written statement submitted will be labeled Randolph Exhibit #2. Ms. Randolph stated this plan has a number of issues, one being the lot size in relation to a condominium development requirement of one acre. Part of 38,000 square feet is in-part, submerged land, which is not to be included in the calculation for open space, and part of this open space is asphalt. We question if the setbacks have been met. The zoning code states that a traffic circulation and parking plan needs to be addressed. There appears to be no plan submitted with the phase being presented within the boundaries of that phase. Zoning regulations state there "shall be" a vehicle storage area, not "may" and optional. We question what is being approved or disapproved because leaving things open to future development that are really critical to how this four unit condominium is going to evolve, is probably not prudent because there may never be a future development and so all of these things should be met with this phase. We believe the setbacks should be applied within the boundary of this particular platted area. This is a condominium project plan that should be whole and intact as its being presented.

Mr. Wilber came forward and stated in relation to the 38,000 square feet, it does not equate to an acre under your zoning code. There is no guarantee that anything beyond what they are proposing would ever be developed. The overall acreage is not accurately presented either. This parcel is over five acres and a significant part of that is submerged land and should not be included as part of your density requirement or part of the lot area requirements for a development. Mr. Smith asked what the square footage of an acre is, Mr. Wilber replied 43,560. Arguably, PH 1, 2, 3 and 4 they are developing something in that area, the area between the docks should not be included in the square footage calculation because it has a navigation easement, therefore cannot be built on and it's our position this area should not be included. Once these condominiums are developed, a legal description will be created. It will be a separate property owned by the condominium association. The plan does not show that detail and would have to come back to the Board for approval. There is

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outstanding litigation related to parking and it is going to mediation tomorrow afternoon and hopefully will be resolved.

Mr. Smith asked what the density requirement is. Ms. Dale read directly from the zoning resolution, Section 4.3.2. Mr. Smith asked if the applicant meets that language. Ms. Dale stated that she believes it does meet the requirement as submitted with the five acre parcel. From the first application, the parcel sized is 5.025 acres and it calculated out to thirty-four units, only four are proposed at this time. Mrs. Robertson commented she doesn't think this is that difficult, the Board has had other proposals come before them with phases.

Mr. Stopar stated Ms. Roberts has made a request to speak. Ms. Brown will be allowed to respond to the testimony and then there will be a motion to close the public comment segment of the hearing.

Ms. Sherry Roberts, 5465 Constitution, came forward and was previously sworn in. Ms. Roberts stated an acre is an acre. Last month the applicant was rejected.

Mr. Coppeler asked that it be stated the parties in which Mr. Wilber is representing.

Mr. Stopar stated that information was shared at a prior hearing. Mr. Wilber represents West Harbor Marina Boataminium Association, West Harbor Landings Boataminium Association, West Harbor Group Inc., West Harbor Cove Manufactured Home Park and Buck Point Ltd.

Mr. Coppeler stated there is no question this is a five acre parcel. Traffic flow circulation was shown on the plan. A legal description will have to be prepared in order to file declarations. In my opinion, there are not any parking issues. Parking spaces were never included in the West Harbor Marina Boataminium to be brought into this condominium development. We think that the proposal meets the zoning requirements for this four unit condo and phase one of this project.

Mr. Smith made a motion to close the public comment segment of the hearing, Ms. Michael 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. Ms. Smith seconded the motion and the roll call vote was as follows: Mr. Smith – yes; Ms. Robertson – yes; Ms. Michael – yes; Mr. Bauer - yes. The motion carried and the Board recessed at 5:38 pm.

Ms. Michael moved and Mr. Bauer seconded the motion to reconvene. The roll call vote was as follows: Mr. Smith – yes; Ms. Robertson – yes; Ms. Michael – yes; Mr. Bauer - yes. The motion carried and the Board reconvened at 6:44 pm.

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-108:

With regard to BZA-2016-108, being a 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, on located at 5401 Maritime Shoreway:

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 "High Density Residential" despite the "R-C" Recreational Commercial zoning designation. The 2011 Land-Use Plan also promotes existing land uses to expand within the parameters of their existing property boundaries and maximize the existing use of physical land as opposed to expanding and sprawling onto undeveloped land.
2. The Conditional Use **will** be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use **will not** change the essential character of the same area because there are no changes proposed with this request that are different from what already exists and there are a variety of housing styles to the north, south and east of this site.
3. The Conditional Use **will not** be hazardous or disturbing to existing or future neighboring uses because the proposed Condominium designation is well below the permitted density and adjacent to other high density housing.
4. The Conditional Use **will not** be detrimental to property in the immediate vicinity or to the community as a whole because same reason #3 above.
5. The Conditional Use **will** be served adequately by essential public facility and services because public utilities to the building, according to the Sanitary Engineers 06.29.16 letter, are currently connected to the 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 because the property has existing vehicular approaches adequate to service the site.
7. The granting of the application is necessary for the preservation and enjoyment of a substantial property right and not merely to serve a convenience to the applicant.

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Mr. Bauer moved that the Board adopts the findings of fact as read by the Recording Secretary and further moved that the Board has given due regard to the Conditional Use criteria of Section 6.2.2 of the Danbury Township Zoning Resolution and after considering and weighing these factors, the Board finds that Decision Standards(s) (1) (2) (3) (4) (5) (6) (7) weigh most 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.
- b. There is a preponderance of reliable, probative and substantial testimony and evidence that **supports** the applicants request for the Conditional Use;

Therefore, the requests should be accordingly **APPROVED WITH THE FOLLOWING CONDITIONS**. The conditions for approval, include:

- 1.) That, all necessary Change of Use zoning permits are obtained for the conversion of the Hotel to Condominiums.
- 2.) That, a copy of the Certificate of Occupancy for each unit is filed with the Zoning Office.
- 3.) An Alternative Vehicle Storage Area shall be provided. Said site plan illustrating this location, shall be submitted to the Zoning Inspector no later than September 7, 2016 and presented to the Board for approval and acceptance prior to the signing of the decision sheet for this case at their September 21, 2016.
- 4.) That, Per Section 6.2.3 of the Danbury Township Zoning Resolution, the Applicant may request a maximum 1-year allowable extension of the approval of this Conditional Use. Should the Applicant request additional extensions, **beyond 1 additional year**, the Board shall reopen the case publically for consideration of the extension request. It is not the responsibility of the BZA or Zoning Staff to remind the Applicant of upcoming expirations. If at any point an expiration has occurred and an extension request has not been filed within 1 month of that expiration date, the Applicant will be required to file a whole new application.

Motion Seconded by: Mr. Smith

Roll Call Vote was as follows: Mr. Smith – yes; Ms. Michael – yes; Mr. Bauer – yes; Ms. Robertson – yes. The motion passed 4-0.

The Chair stated the case has been approved with Conditions and the applicants may pick up their permit following the September 21, 2016 meeting.

The Chair stated let the record show that Ms. Roberts will be seated for the remainder of the hearings.

The Chair stated the second continuation hearing from July regarding the Limpert's Marina property at 501 Miley has been withdrawn and that letter was filed with the Zoning Department on July 26, 2016.

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

**Adjudication Hearing
Case BZA #2016-140
420 E. Sixth Street**

Request for a Use Variance in accordance with Section 7.8.2.C.ii to allow for a community pool & wellness recreational facility and a Conditional Use in accordance with 5.2.2.C to allow the required parking to be off-site on a lot within 300' from the main use. Dan Dudley, CFO & COO of Lakeside, Michael Shade, Esq., Agent.

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. Mr. Bill Smith abstained from this hearing.

Ms. Dale stated let the record show that Alternate Joe Fetzer will be taking Mr. Smith's place and Ms. Michael will remain on the Board in Loretta Grentzer's absence.

Mr. Bauer 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.

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Ms. Dale asked to let the record show Mr. Shade is not present, Jim Barney from Kocher and Gillum is present as the legal counsel for Lakeside, Kevin Sibbring CEO of Lakeside, as well as Dan Dudley and John Feick of Feick Design Group is the Engineer/Architect who can explain the plan.

Ms. Dale stated this application is for a Use Variance of a community pool, recreational wellness center and supplemental accessory buildings serving those uses such as a mechanical building, storage buildings and bath house. Parking is required to be provided, which Lakeside is proposing to provide on two lots owned by Lakeside Association, located north of the subject site, but across the street from the facility, which requires Conditional Use approval by the Board according to the parking language in the zoning resolution because it will be on another property within 300 feet.

Within Lakeside, there are two zoning districts, the "L" Lakeside and "LBO" Lakeside Business Overlay. The "LBO" district was created in January 2012 and covers generally the businesses near the Hotel, the Pavilion at the pier, the park near the hotel & pavilion and the businesses between Maple & Central to Hoover Auditorium. The rest of Lakeside, is in the single "L" zoning district and a Recreational Facility is not listed as a permitted or conditional use within the "L" zoning district, but is listed as a permitted use in the "LBO" district. Both districts were updated in May of this year. Prior to the public hearing and adoption process, the Township shared these changes with Lakeside representatives and did not receive a response and nothing was mentioned about the pool and recreational facility. In the applicant's narrative statement, it indicates that this facility was initiated and has been discussed since the summer of 2015, however the Township was not contacted until July 26th, just a few weeks ago. At that time the options were explained to them.

Ms. Dale said that on page 3 of the applicants narrative statement, they indicate this site was selected because it existed as an Athletic Park prior to zoning being enacted in 1975 and platted as such. There is some partial truth to that statement. The "Athletic Park" was recorded in 2004 when they consolidated lots, the old railroad bed and vacated streets, but it was not approved by the Township with a blanket use for health and wellness complexes. The Athletic Park was what they called the plat when they did the lot consolidation. At that time, in 2004, a pavilion replacement permit was obtained. No permits were issued for the tennis courts, and it's presumed they are grandfathered. The walking paths and trails are not required to have permits from the Township.

According to ORC 519.14(B) such variance from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship. According to Danbury Township resolution, per Section 7.8.2.C.ii, a use variance involves the development or conversion of land for a use not permitted in the specific zoning district. Standards applied related to the concept of "unnecessary hardship" must not be contrary to the public interest and the board of zoning appeals must insure that the spirit of the zoning resolution is observed. In Meck & Pearlman, Ohio Planning & Zoning Law, §9.6, (referring to an Ohio Supreme Court case *Kisil v. City of Sandusky*), explains that unnecessary hardship generally results when a property cannot feasibly conform to a permitted use under its present zoning classification due to characteristics unique to the property. Evidence must show that the property is unsuitable to any of the permitted uses.

Ms. Dale stated that as for parking, parking lots are listed as a permitted use in the "L" zoning district, however, according to Section 5.2.2.C, "All parking spaces required herein shall be located on the same lot with the main use served except that spaces may be located within three hundred (300) feet on which the main use is located provided a conditional use permit for the parking is approved by the Board of Zoning Appeals and the zoning district is the same as the main use." The proposed parking for the 29 required parking spaces is 65' away according to the Lakeside Athletic Park plat. They came to the calculation for needing the 29 parking spaces by requiring 1 space for every 200 s.f. of commercial space since all the buildings will have to meet commercial standards. The applicants specifically asked if they are subjected to Section 5.2.3 which discusses additional standards when a parking lot abuts an "A" or "R" zoning district. Staff advised them they were not since the "L" district is not considered to be strictly a residential district and it's not agricultural, but since this was undergoing conditional review, the Board could impose some of those requirements since the parking lot will be abutting residential homes. The applicant has self-imposed a 15' setback being a greater setback than the 5' requirement, although they have not provided information for buffering of headlights or parking lot lighting.

Jim Barney from Kocher & Gillum attested the documentation provided to the Board was what they submitted. Mr. Barney stated that also representing Lakeside Association is CEO Kevin Sibbring, CFO Dan Dudley and John Feick, Engineer of the project from Feick Design Group.

John Feick, Kevin Sibbring and Dan Dudley at 236 Walnut were sworn in.

Mr. Barney introduced himself and Lakeside representatives. He said he would review from a legal standpoint the decision standards and leave the "How" and "Why" Lakeside is here to Mr. Sibbring. Mr. Barney went on to review the decision standards. This project, was platted as the Athletic Park and showed the Board where the pool, tennis courts, wellness center and other

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maintenance structures will be located. A couple of trees will need to be removed, one is already dead, but for the most part the trees will remain undisturbed. The first decision standard is this project is not contrary to public interest and the spirit and intent is observed. Residents have been polled and there is overwhelming support for the project. It is consistent and harmonious with the area. The 2004 replat of this area made this an athletic area, even though it didn't go through zoning for that, and today when I drove by the property, there were a ton of people using it. They were walking on the trails and the tennis courts were full, it is basically an athletic facility actively being used in that manner. The land use is pretty much the same as it is being used now, as an athletic facility. The decision standards regarding special circumstances that apply to the land in question, necessary for the preservation and enjoyment, of a substantial property right, and not merely to serve as a convenience of the applicant, I will lump those together. These standards are difficult to put your finger on. It's hard to prove beyond a reasonable doubt and I can't tell how these decision standards are met with this plan but there are times you just know when something is right and standards are met. He provided an example of a banana, can't describe it, but know when you see it and taste it. The Township recognizes the uniqueness of Lakeside by giving them their own zoning districts "L" and "LBO". When this was originally planned over one hundred years ago, they didn't foresee a plan such as this. The replat of the lots under the Athletic Park plat was Lakeside's way of showing they didn't want more houses, more density, thus the property meets the unnecessary hardship test because Lakeside has said, by this plat, that single-family residence are not appropriate. The planning committee looked at the "LBO" district and there was no property that was suitable for this project. Other locations were considered but they were cramped or several mature trees would need to be removed. They wanted to find a location that would provide the least amount of impact on Lakeside in general. Other locations considered in the "LBO" district would have impacted congestion. It may be possible to put some of the permitted uses on this property, but it is not practical. The committee feels this is the right location for this facility and park-like setting. The last standards about public safety, air and light are not really applicable.

Mr. Barney stated Lakeside is trying to discourage traffic from coming into this area. There is a charge at the gate to drive a vehicle in and it is actually more convenient to park outside the gates. Placing the recreational facility in this area can be viewed as helping the congestion problem. Other locations considered, such as by the auditorium, would have contributed to congestion in an already busy area and while this may bring more people to this area of Lakeside, it's not contributing to an already congested area. To add more parking spaces, it may encourage more traffic, and people may bring in their vehicle to park in these additional spaces because they are available and it would actually be better to not provide a parking area which would encourage people to drive to the facility. It is not Lakeside's intention to have the facility open late at night and security lights may be more of a bother to residents than a benefit during the peak season. The committee is open to planting some kind of buffer if needed. In summary this project meets the standards and will benefit the community and not harm any surrounding property.

Mr. Stopar asked if the board Mr. Barney has been pointing to would be entered as an exhibit or is just being used for demonstrative purposes. Mr. Barney said both and a handout of what was shown on the board was distributed to the Board members. Mr. Stopar said the Board has to do findings of fact on the variance request when making the final decision. Mr. Stopar ask Mr. Barney to prepare a reply to the decision standard number two which states the granting of the application is necessary for the preservation and enjoyment of a substantial property right and is not merely to serve a convenience to the applicant. Mr. Barney said that this ties into what he was talking about with their property right to use this property for other uses, but in reality it's not practical to put those permitted uses on this parcel. Ms. Robertson stated that this property is being used as a park already. Mr. Barney stated this park predated zoning and they just want to add to the use.

Ms. Dale stated the map handout, given to the Board members will be Applicant Exhibit #1.

The Chair requested a five minute break.

Mr. Kevin Sibbring, previously sworn in stated he would like to give the background on why they are here, why it's important to have a community pool and why the wellness aspect is so important. He stated discussions regarding the pool and wellness center started around June 19th or 20th of 2015. Lakeside brings in over one hundred thousand people during the ten to eleven week Chautauqua season. Lakeside really wanted to include the community, including the residents and guests in the discussions. Lakeside brought in a consultant to determine the community's emerging priorities and from a donation standpoint where Lakeside should be heading and what those priorities should be. There were several community type gatherings regarding this matter to gather feedback. He stated became President of Lakeside in January of 2005 and in all those years, they've never really had any serious issues regarding the lake. Lakeside closed the access to the lakefront and beach for fourteen days last summer due to the algae bloom and had lots of disappointed people. The splash park does not use lake water, but it is for children 3-9 years of age. It is not a pool, just a water

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activity for children. At the end of the year, the consultant reported a swimming pool came up as the number one priority and secondly, enhanced spaces for exercise activity. A 1953 pool brochure was found in our office where there was an attempt to raise funds at that time. Last Labor Day weekend, Lakeside held a community forum and we intend to hold one this year. There were other projects we wanted to move forward with, but learned the community was not as supportive for those projects, such as a full renovation of Lakeside Hotel, so it was taken off the table. Unlike other projects in Lakeside, this project has been community driven and is right in-line with Lakeside's mission to enrich the mind, body & spirit. There was a task force created for this project that holds a teleconference call every week. They make recommendations to the governing board members.

Mr. Sibbring said in February of this year, the first recommendation was the location. At least ten locations were considered. All but two were eliminated because they weren't large enough. One location was in Central Park, close to the lakeshore and in the "LBO" district. But, it was recommended by some pool experts not to place the pool close to the lake. The second was this 6th Street location. As we continued our due diligence, we learned our largest sewer line runs through that Central Park area. Although the pool would not have been placed directly on that, some of the infrastructure would have been. At both locations the pool will have to be raised because there is limestone close to the surface. The pool deck will have to be two to three feet off the ground. The State of Ohio requires a four foot high fence, we want a six foot fence, which will be 8-9 feet above grade to discourage teenagers from jumping over the fence to take a swim. The Central Park location would have been located very close to the Lakeside Women's Club, condos, Hotel Lakeside and residents. Another words, it was going to be a disruptive element and separated that area into two zones. Lakeside has been here for one hundred and forty-three years and it was overwhelming for many to think that we could place it there. We actually staked out the plan at both locations. Once it was staked out at the two locations and Lakesider's could visually see that sixteen trees would need to be removed from the Central Park, the concern quickly became how was this going to look in the winter with a raised pool and a six foot high fence. Central Park is used every single month. For these reasons, in February, the task force recommended the proposed location. A vote took place that day by the governing Board and affirmed the proposed is the desired location. Spring of this year the community was kept informed through various ways such as monthly newsletters. We established a capital campaign of three million dollars. We are north of 2.5 million collected in pledges, which is a sign that the community is in full support of the project. Our goal is to hit the three million in pledged funds by Labor Day, then we will have to look at the construction of the project. Clearly it was an oversight and a mistake to not have considered zoning. Again, I was not in this position when this area was being replatted. The tennis courts are there and this space is being used as a recreational area. Lakeside would like to begin the construction before the end of this year. Ideally, we would like to complete this project by the beginning of our Chautauqua season next year or at least well into the construction.

Ms. Dale stated she wanted to remind them of the Lakeside regulations and that the building height must be no higher than thirty feet from the finished or natural grade whichever is lower. And the fences are limited to four feet in height in Lakeside in the front and side yards. If Lakeside wants to have it higher, Lakeside will need to come back before this Board for a variance. She said she just wants to make them aware of this so they can figure this into their process for construction. She stated, the BZA is not considering that during this hearing because it was not advertised. First, the Use needs to be established.

Mrs. Robertson stated she would begin reading through the sign-in sheet and call upon those to see if they wish to speak. She asked that repeated comments be limited. The following people were called upon but stated they wished not to speak. Joseph Caner, Jim Meyer, Bill Maenner, Mike Brown.

Ms. Cheryl Ulmer, 316 Sixth came forward and was sworn in. Ms. Ulmer stated a pool would be a great addition to Lakeside. This park site is used all the time for recreational and fitness activities. She's a little concerned about this area being lost since it is used regularly, and once it's gone, it's gone forever. East of the clay courts is an open area that has a natural decline and wouldn't require as much digging for a pool site.

Mrs. Robertson continued to call upon those present. The following stated they did not wish to speak, Joel and Angela Brucken, Terry Tomlinson, Linda & Doug Huber, Kurt Geisheimer, Karen Mader, Sara DePerro, Tom Jones, John Starcher, Bill Drackett, Bruce Bennett, Glen Becker.

Mr. Feick, previously sworn in, stated the other locations considered would require a significant loss of trees. This location is wide open. In essence, one large tree will be removed; 6, 8 or more would have been taken anywhere else. There is plenty of access to this area. Safety is a concern and this site here at 6th Street has 2 access points and plenty of lateral streets. The buildings have been placed on the perimeter to block some of the lights and noise from the residential homes. All

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buildings are one-story and under thirty feet high; two of the buildings are twenty foot high and we are still working out the finishing details on the other building.

No one else with standing wished to speak.

Ms. Robertson stated on Sixth Street, vehicles drive well above the speed limit. She asked that they explain how safety of pedestrians will be addressed. Mr. Sibbring replied, there is a shuttle system in place that moves people around by golf cart. A wellness area encourages exercise and Lakeside is magnifying that the community is a pedestrian community. Lakeside envisions a need to add a route to that shuttle service throughout the day that frequents the pool. Lakeside intends to close the pool every day around the dinner hour. Lighting requirements are cost prohibitive to be open into the evening and would have required fixtures that they felt did not fit into the aesthetics for Lakeside, which were similar to tall parking lot poles. Quiet activities such as lap swimming and water aerobics will take place in the morning with set programs. The open family swim is anticipated to open around noon. Other green space will be maintained, for example all of Cherry Park is one city block. The right-of-way along the lakefront west the hotel and Perry Park and west of the school house, people are free to use and effort will be made to educate these open spaces are available to use.

Mr. Sibbring asked Mr. Feick to describe the rise in grade and that the whole pool won't be raised, but the end closest to Sixth Street will. Mr. Feick stated there is about a six feet fall from one end to the other of the lot, therefore it will be terraced, therefore the whole building will not be out of the ground.

Ms. Robertson stated there are parking places there now, is alternate parking going to be provided for these people? Mr. Sibbring replied, largely people that park there are from the north who have filled their own two spaces at their homes. Through signage and education, the use of the parking area would be discourage and the shuttles would be encouraged. Handicap spaces will be provided. People will be encouraged to walk or bike within Lakeside. Lakeside is not opposed to crosswalks, but we would like to monitor the activity for the first year and then make corrections or additions. Ms. Robertson asked if the beach had been closed at any time this season. Mr. Sibbring replied not this year but they have posted some warnings. Only three weeks ago we've seen the algae bloom in Maumee Bay area. Lakeside receives a bulletin called Lake Erie HAB, Harmful, Algae, Bulletin put out by NOAA. There is some algae between our docks and it will continue to be monitored. Ms. Michael asked if there was another place for yoga and other activities because she see where they offer those types of classes now. Mr. Sibbring replied yes, the yoga take place in the second story of a building in the Business District called the Upper Room. This room is also used for the youth ministry to gather. He said the room is actually miserable if you're doing yoga because there are only window A/C units. Lakeside is out of program space as we continue to evolve, it is harder to find space for the activities. Lakeside will need to repurpose some of the building spaces as it continues to evolve. Ms. Michael asked if there were other places to swim outside of Lakeside. Mr. Sibbring replied people who like to do lake swimming, purchase memberships at the private clubs like CIC and Bay Point. Lakeside pays Danbury School District to have access to Danbury Schools indoor pool which has limited hours and classes offered. Ms. Michael asked, related to the representation ratio of the feedback, how much were from year-round, seasonal, inside Lakesider's, outside guest? Mr. Sibbring stated the 120 to 150 year round residents is weighted most heavily. Lakeside received visitor comments and feedback, much through social media.

Mrs. Robertson asked again if anyone had anything more to add, including from those from the public. 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.

Ms. Roberts 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; Mr. Fetzer – yes; Ms. Robertson – yes; Ms. Michael – yes; Mr. Bauer - yes. The motion carried and the Board recessed at 8:04 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; Ms. Michael – yes; Mr. Bauer - yes. The motion carried and the Board reconvened at 8:54 pm.

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-140:

With regard to BZA-2016-140, being a request for a Use Variance in accordance with Section 7.8.2.C.ii to allow for a community pool & wellness recreational facility and a Conditional Use in accordance with 5.2.2.C to allow the required parking to be off-site on a lot within 300' from the main use, for the property located at 420 E. Sixth Street:

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1. There **are not** special circumstances or conditions applying to the building or land in question that are peculiar to such lot or property and do not apply generally to other land or buildings in the vicinity and were not created by the applicant.
2. The granting of the application is **not** necessary for the preservation and enjoyment of a substantial property right and is merely to serve a convenience to the applicant because the applicants have not presented any compelling information to show that there is an unnecessary hardship or that the proposed site cannot feasibly conform to a permitted use under its present zoning classification due to characteristics unique to the property.
3. The authorization of the Use Variance **will** unreasonably increase the congestion in public streets.

Ms. Michael moves that after considering and weighing these factors, the Board should find that:

- a. Unnecessary hardship is **not** shown sufficient to warrant granting the Use Variance requested,
- b. The property **can** feasibly conform to a permitted use under its present zoning classification due to characteristics unique to the property,
- c. The applicants have **failed** to carry-out their burden of proof to show that the property is unsuitable to any of the permitted uses.

and further move that the requested Conditional Use Permit be denied because the applicant's requested Use Variance has been denied.

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

Motion Seconded by: Mr. Bauer

Roll Call Vote was as follows: Mr. Fetzer – yes; Ms. Michael – yes; Mr. Bauer – yes; Ms. Robertson – yes; Ms. Roberts – yes. The Chair announced this application has been denied 5-0.

Ms. Harmsen introduced the third case of the evening:

**Adjudication Hearing
Case BZA #2016-135
5815 Saylor**

Request for an Area Variance from Section 5.1.E for the construction of a 24' x 32' detached garage on a lot declaring water as the front yard, shall not place an accessory building any closer than 20' from rear lot line (9.5' proposed). Dan & Jean Svejkovsky, Owners/ Jason Zimmerman, Zimmerman Pole Barns, 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.

Ms. Roberts moved to open the public hearing, seconded by Mr. Smith. All were in favor and the motion carried.

The Chair asked the Zoning Inspector to give an overview of this application.

Ms. Dale stated the applicant is proposing to remove existing accessory sheds and construct a detached 24' x 32' accessory building on the property which will be 9.5' from the rear property line to the overhang of the proposed structure. The current sheds are approximately 11' from the rear property line now. For properties on the waters of Lake Erie, they have the option of choosing the water or street side as their front yard. Article 5, Section 5.1.E states for Accessory Buildings & Uses states: "For lots declaring the waters of Lake Erie or Sandusky Bay as their front yard, no accessory building may be located closer than twenty (20) feet from the rear lot line" or in this case the street facing side. Neighboring properties have been granted variances similar to this request in the past, even though those cases do not set precedence, but this request would align with general character of the neighborhood that has been established as a result of those other variances granted. Ms. Dale shared what those measurements were that were granted. Ms. Dale reviewed the Decision Standards the Board would be considering.

Jason Zimmerman came forward and was sworn in and attested the documentation provided to the Board was what they submitted.

Mr. Zimmerman stated the owners couldn't be here this evening because of a family commitment. Zimmerman Construction has constructed several buildings in the area. The neighbors' property to the west has an eight foot variance and other properties in this area have similar variances therefore, this would fit in with the general character of the neighborhood. There is a gas line that needs to be moved. Columbia Gas has been notified and they will disconnect the gas line to their

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residence while the accessory is under construction and reconnect the service once it is framed. The hardship is Mr. Svejkovsky has a disability, they plan to make this their permanent residence and they have a hard time storing their extra items such as lawn chairs and equipment and they need extra parking options. The proposed garage will be single story, so nothing huge and all other setbacks and requirements are met.

Mr. Smith presented a picture of the property and asked the location of the garage door. Mr. Zimmerman replied it's shown on the twenty-four foot side, but they can't have 2 driveway accesses. Mr. Smith stated, that was what he was worried about. Mr. Zimmerman said it would have to be moved to the side to access the existing driveway. Mr. Smith stated that may need to be changed on the drawings, and questioned the effect of the shared drive with the neighbor. Could the door be situated on the thirty-two foot side? Mr. Zimmerman replied, when looking at it, that should be able to be done and the orientation could be rotated, but he would need to consult with his clients before committing to a complete rotation of the building. Mr. Smith stated if it were completely rotated it might prevent the neighbors from being able to use the driveway. Mr. Smith stated either change would provide more parking space outside the building. Mr. Smith said his biggest concern was the distance to the road from the door based on how it is shown. He asked if they could make a condition to move the door to the 32' side or to rotate the building completely. Ms. Dale advised that they want to stay away from redesigning the project without the agent consulting with his clients, and they needed to act on the variance requested, and pointed out that Mr. Smith's comments and concerns are 1 of the 4 others that sit on the Board.

Ms. Roberts asked the height maximum. Ms. Dale replied twenty feet for accessory buildings. Mr. Zimmerman stated this is fourteen feet high. Ms. Robertson asked the desired timeframe for construction. Mr. Zimmerman replied the owners want this constructed before winter.

Discussion centered on the optional door locations and the possibility of continuing the hearing, to give the owner these options, as well as the effect the delay would have on construction related to the onset of winter.

There was no one present 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.

Ms. Roberts 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; Mr. Fetzer – yes; Ms. Robertson – yes; Ms. Michael – yes; Mr. Bauer – yes; Mr. Smith – yes. The motion carried and the Board recessed at 9:22 pm.

Ms. Roberts moved and Mr. Smith seconded the motion to reconvene. The roll call vote was as follows: Ms. Roberts – yes; Mr. Fetzer – yes; Ms. Robertson – yes; Ms. Michael – yes; Mr. Bauer – yes; Mr. Smith – yes. The motion carried and the Board reconvened at 9:32 pm.

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-135.

With regard to BZA-2016-135, being a request for an Area Variance from Section 5.1.E for the construction of a 24' x 32' detached garage on a lot declaring water as the front yard, which shall not place an accessory building any closer than 20' from rear lot line (9.5' proposed) for the property located at 5815 Saylor:

1. The property in question **will** yield a reasonable return and 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 the rear yard setback will be reduced by 55%.
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 there is an existing shed located in the same location of the proposed garage, there are existing garages and shed located in the 20' setback elsewhere in the vicinity.
4. The variance **would not** adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because some utilities may need to be relocated on the property, but there is no indication that there would be a detrimental effect on government services.
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.
7. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance because the requested variance is consistent with the character of the neighborhood.

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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) (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: Mr. Smith

Roll Call Vote was as follows: Mr. Smith – yes; Ms. Michael – yes; Mr. Bauer – yes; Ms. Robertson – yes; Ms. Roberts - yes. The motion passed 5-0.

The Chair stated the case has been Approved and the applicants may pick up their permit, following the September 21st meeting.

The Chair stated Brad Bauer will step away and Joe Fetzer will take his place on the Board.

Ms. Harmsen introduced the forth case of the evening:

Adjudication Hearing
Case BZA #2016-138
2220 Commodore Ct.

Request for Area Variance from Section 5.5.4.B.i.e to allow for a permanent on-premises, subdivision identification sign to be located 2' from the road-right-of-way (5' required) at the west entry of Commodore Bay Subdivision. Commodore Bay Association, Applicant/ Steve Bauman & Bill Larion, Representatives.

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

The Chair asked the Zoning Inspector to give an overview of this application.

Ms. Dale stated in May, while out on inspections, she noticed Commodore Bay Association had placed a permanent on-premises sign at their entry without the proper permits. The sign 2.5' x 4' for the sign face and the entire sign is sized four feet eight inches by four feet five inches. This subdivision identification sign is at their main entrance of Commodore Bay Subdivision on the west side of the private street. The sign is encroaching 3' into the 5' setback requirement. They are asking for an allowance to remain at a two foot setback. The setback is measured from the property line or the right-of-way. In 2013 the sign requirements underwent a re-write and there has only been one other sign variance request since. In regards to the other signs mentioned in the submission, all signs in existence prior to the modification to the text amendment made in 2013, are grandfathered. The applicant also refers a number of times to a fire hydrant being located closer to the road than this sign, but that is part of the public infrastructure system and is not a justification as to why this sign should be permitted. Ms. Dale reviewed the Decision Standards the Board would be considering.

Steve Bauman came forward to be sworn in and attested the documentation provided to the Board was what they submitted.

Mr. Bauman stated they did install the sign without getting a permit. Another person was in charge of this project at the time this was installed, so his apologies for that. Mr. Bauman stated the person was very good about coordinating the sign and getting it ordered, but got anxious in the spring when people were around to help install it, so it happened without a permit. He said they measured the setback of the Baywinds sign and tried to replicate that distance. They were aware of the twenty-five foot right-of-way and being located outside of that, but as it turns out, there is an additional five-foot setback. We are over that setback by 3'. As it turns out, the Baywinds sign is a little further back than our sign, but it's much larger. One of our concerns were, that while in your vehicle, the driver can see on-coming traffic over or around the sign. The Baywinds sign is over 5' tall and cannot be seen over and our sign is only 3' and can be seen over and has not been an issue all summer. There are other signs in the Township that encroach in the same manner. Even though they are grandfathered in, the point is, this sign is nice in appearance and very well constructed. The fire hydrant was brought up in our response because if a vehicle swerved off the road, they would hit the fire hydrant and not the sign. If we have to move the sign, there is a small tree in the yard that we put

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the sign in, which would make this sign very hard to see until you get close. Mr. Smith asked to identify the location of the tree and asked if it was the really little one that showed up in the pictures submitted in the application. Mr. Bauman said yes, but it becomes a safety issue so people have enough time to react to the sign and turn into their subdivision. Mr. Smith said he views that as a self-imposed problem and the tree could be moved so the sign is visible once the setback is met. Mr. Bauman said he's not telling the Board the sign can't be moved, but it's very much not preferred. Mr. Bauman stated the sign material is made out of expandable foam and is actually very weak. Our preference is not to move it. Ms. Roberts asked who made the sign, Mr. Bauman said he did not know. Mr. Smith asked for clarification that the sign face is made of foam. Mr. Bauman said no, the whole sign is. Mr. Smith said but the posts are vinyl. Mr. Bauman confirmed they were boards covered in vinyl.

Bohdan Czepak, 2220 Commodore Court, came forward and was sworn in. Mr. Czepak stated he is the owner of the property since the late eighties and a member of the Association before Mr. Bauman was involved. About 2 months ago or six weeks ago, he came and noticed his Rose of Sharon bushes were dug up, destroyed and he found this ugly sign in his front yard without anyone asking him permission to do so. He contacted the gas company and they confirmed easements are strictly reserved for the utility companies, no one is to place a solid structure in this area. No permit, no consult and destruction of my property. They should obey the laws like everyone else.

Mr. Bauman stated that he would have expected that the board member who was previously in charge of this project would have contact him. Mr. Bauman said he's never met Mr. Czepak and very much apologizes that he was not contacted in advance, this is news to him.

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

Ms. Roberts moved to recess into executive session for the purpose of deliberating the merits of the case. Mr. Fetzer seconded the motion and the roll call vote was as follows: Ms. Roberts – yes; Mr. Fetzer – yes; Ms. Robertson – yes; Ms. Michael – yes; Mr. Smith - yes. The motion carried and the Board recessed at 9:55 pm.

Ms. Roberts moved and Mr. Smith seconded the motion to reconvene. The roll call vote was as follows: Ms. Roberts – yes; Mr. Fetzer – yes; Ms. Robertson – yes; Ms. Michael – yes; Mr. Smith - yes. The motion carried and the Board reconvened at 10:14 pm.

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-138:

With regard to BZA-2016-138 a request for Area Variance from Section 5.5.4.B.i.e to allow for a permanent on-premises, subdivision identification sign to be located 2' from the road-right-of-way (5' required) at the west entry of Commodore Bay Subdivision near 2220 Commodore Court:

1. The question about yielding a reasonable return is not applicable.
2. The variance is substantial because the request is for a 60% encroachment.
3. The essential character of the neighborhood **would** be substantially altered by the variance and adjoining properties **would** suffer a substantial detriment as a result of the variance.
4. The variance **would not** adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.)
5. The Association was aware of zoning restrictions.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by properly locating the sign within zoning requirements.
7. The spirit and intent behind the zoning requirement **would not** be observed and substantial justice done by granting the variance because the restrictions are not so stringent that the association is completely prevented from, or is unable to adequately identify their location.

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) (5) (6) (7) weigh more heavily to show that:

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

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

Motion Seconded by: Mr. Smith.

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Roll Call Vote was as follows: Mr. Smith – yes; Ms. Michael – yes; Mr. Fetzer – yes; Ms. Robertson – yes; Ms. Roberts - yes. The motion was denied 5-0. The Chair announced the application has been denied.

Ms. Harmsen introduced the fifth case of the evening:

**Adjudication Hearing
Case BZA #2016-139
2352 N. Buck Road**

Request for Area Variance from Section 3.5.7 to allow for the construction of a new SF home to encroach into the 20' front & 5' rear yard setback. (2' Front & 13' Rear Proposed). James Bemer, Owner/Applicant.

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

Ms. Roberts moved to open the public hearing, seconded by Mr. Smith. All were in favor and the motion carried.

The Chair asked the Zoning Inspector to give an overview of this application.

Ms. Dale stated the applicant is proposing to remove all existing structures on the property and construct a 26'4" x 44' new single-family home on the property which will be 2' to the overhang from the rear property line (water-facing side/ 5' required) and 13' to the overhang from the front property line (street-facing side/ 20' required). The applicant has included an existing conditions map of the property which shows two sheds and multiple ways where they have encroached into the required setbacks of all the yards. The proposed new house will be more conforming despite the current encroachment requests. Staff said a few other variances have been issued near this property, which again, doesn't set precedence, but the granting of those variances effect the character of the area. Even if staff looks at the average setback of the 5 principal structures (not accessories) along the north side of Pickerel, it equals out to a 16' setback, and the applicant is requesting 13'. However, some of these homes have chosen to have the water-facing side as their front yard, thus the street side would be considered their rear and there is no averaging language in the code for rear yard setbacks along a street. Directly to the south, across the street at 2346 N. Buck, the property was granted a front yard variance to allow an 11' setback from Pickerel, but this was a corner lot too. Ms. Dale reviewed the Decision Standards the Board would be considering.

James Bemer came forward and was sworn in and attested the documentation provided to the Board was what he submitted.

Mr. Bemer stated this property has been in his wife's family since the 1930's and when they sat down and started this process about 2 years ago, they really looked at what they needed, know they want to retire here, and a ranch is all they have considered so the house meets their needs as they age. This lot is pie shaped and they wanted to conform as much as possible, which included wanting to conform to the neighbors' orientation of their homes on each side, leaving them with corners that encroach into the setbacks. Two sheds and trees will be removed. Electric will be upgraded, including the removal of a pole because they are able to tie into an underground service. The house being a ranch will be seventeen and a half foot high. The home to the south is 2 story and he believes their view will improve once the new house is built due to the low roof pitch they plan on having and the elimination of the shed by the water. This house will not encroach into the public area called the Harbor Walk. They are proposing a 2' setback from the property line near the Harbor Walk so they can maintain that corner of the house if they need too for maintenance purposes, then we could access that corner from a public space and not someone's private property. The proposed positioning of the house will allow them to provide onsite parking without blocking the dead-end street, which now they barely have 1 parking space.

Mr. Smith asked where the contents of the sheds were going to be placed. Mr. Bemer replied the home will have access doors for storage underneath. Mr. Smith stated there is no room on this lot for a future garage. Mr. Bemer replied that they are aware of that fact. Mr. Smith commented though that a custom built home could accommodate a garage. Mr. Bemer said they had priced out a plan with a garage on the ground floor and going up with living space, but it wasn't something they wanted to do to the neighborhood, there are some other restrictions too that prevented it and it wasn't cost effective for them. Ms. Roberts said she understands that they priced out another option that didn't fit their budget, but asked if that other plan would have required variances. Mr. Bemer replied no it would not have.

Kelly Bemer came forward and was sworn in. Ms. Bemer stated they took two years to plan this home with consideration of the neighbors. She said there have been larger home built in the area

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and it has stirred things up and they don't want to do that. She said they really looked at their needs not wants and like that it's small and their little getaway right now. It is a modular home manufactured by Skyline.

Ms. Elizabeth Pence, 2346 N. Buck came forward and was sworn in. Ms. Pence stated she is the neighbor behind this property. Based on the information zoning placed on line, they are supportive of this plan. She commented that when they bought their house, they knew this lot existed and they jokingly called their property "View for Now". We understand their desire to make improvements and everything we have seen, seems acceptable and we are happy they have decided to go with a ranch and not a 3-story.

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

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

Ms. Roberts 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; Mr. Bauer – yes; Ms. Robertson – yes; Ms. Michael – yes; Mr. Smith - yes. The motion carried and the Board recessed at 10:35 pm.

Ms. Roberts moved and Mr. Bauer seconded the motion to reconvene. The roll call vote was as follows: Ms. Roberts – yes; Mr. Bauer – yes; Ms. Robertson – yes; Ms. Michael – yes; Mr. Smith - yes. The motion carried and the Board reconvened at 10:43 pm.

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-139:

With regard to BZA-2016-139 a request for Area Variance from Section 3.5.7 to allow for the construction of a new SF home to encroach into the 20' front & 5' rear yard setback. (2' Front & 13' Rear Proposed) property location at 2352 N. Buck Road:

1. The property in question **will** yield a reasonable return or **can** be used beneficially without the variance because the property can be used for a single-family residence and there is an ample building envelope to accommodate a home.
2. The variance **is not** substantial because the encroachments are not the entire ends or side of the proposed home, but simply corners of the proposed structure due to the irregularity of the lot.
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 there are two existing sheds encroaching into the setbacks that will be eliminated, and the proposed new home will be more conforming to the setbacks than the existing home.
4. The variance **would not** adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) While some utilities may need to be relocated on the property, there is no indication that there would be a detrimental effect on government services.
5. It was not asked if the property owner **did or did not** purchase the property with knowledge of the zoning restriction.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance because the owners have indicated a custom built home made to fit on the irregular lot would be cost prohibitive for them.
7. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance because the home is more conforming to the setback lines, especially to the east and will be further separated from the neighboring structure and the home will remain a ranch but much improved.

Mr. Smith 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: Ms. Roberts.

Roll Call Vote was as follows: Mr. Smith – yes; Ms. Michael – yes; Mr. Bauer – yes; Ms. Robertson – yes; Ms. Roberts - yes. The motion passed 5-0.

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The Chair stated the case has been Approved and the applicants may pick up their permit, following the September 21st meeting.

Ms. Harmsen introduced the sixth case of the evening:

Adjudication Hearing
Case BZA #2016-141
5741 Von Glahn

Request for an Area Variance from Section 3.1.1.D to allow a lot split and the lots to be less than 150' wide (140' each proposed) and to allow a side-yard setback of 17.3' from an existing structure to the new property line (20' required). Lee & Deborah French, Owners/Applicant.

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

Ms. Roberts moved to open the public hearing, seconded by Mr. Smith. All were in favor and the motion carried.

The Chair asked the Zoning Inspector to give an overview of this application.

Ms. Dale stated the applicants own a 5.303 acre tract and are asking to carve-out or split off a 1 acre tract that the existing house and barn sit on, in order to sell the property. The property currently has 280' of frontage along Von Glahn and the applicants are proposing that this frontage be split equally, creating two 140' wide lots, along the road frontage. The "A" Agricultural zoning district requires that lots are 150' wide. In an effort to make the frontage equal, the new property line is proposed to be 17.3' from the closest corner of the existing deck at the rear of the house; where 20' is required. The closest corner of the physical house is 20.5'. Ms. Dale reviewed the Decision Standards the Board would be considering.

Lee & Deb French came forward and were sworn in and attested the documentation provided to the Board was what he submitted.

Mr. French said they have owned the home since 1988 and then they moved to Willard. They rented the house out for a while, but the renters did a lot of damage and 2 years ago Deb & some contractors pretty much rebuilt the whole house inside and now it's beautiful again. He said they had originally put it up for sale with all the acreage, but most of the inquiries were from contractors asking about splitting it up, and they really didn't want that for the property. He said they really wanted a family to buy it since they had raised their family there. They have found a family now who is interested in buying it, that would be Tony Zelms and his family, but they are not able to afford the entire 5 acres at this time and that is why they are asking to split off the acre with the house and barn, they would maintain the land and then if in a few years down the road they are able to, they can buy the land from us. The remodel was pretty expensive and left them in a pretty tight spot financially. This split would help alleviate their problems and help a family establish in this community.

Mr. French said he did contact the County Engineer, and if for some reason in the future, the Zelms' are not able to buy the remaining 4 acres, they will be able to get another curb-cut in along Von Glahn and there is plenty of room to put in another house without having to ask for any other variances after today.

Anthony Zelms, 108 S. Sunnydale, came forward and was sworn in. Mr. Zelms said this is a dream house for him and his family. He was born and raised in Danbury, his two children go to Danbury and he's been going over taking care of things for the French's and even though it's not his, it feels like his. Mr. Smith clarified that he is the perspective buyer. Mr. Zelms said yes. He said the French's have been great to work with and helping them get this done.

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

Mr. Smith moved to recess into executive session for the purpose of deliberating the merits of the case. Ms. Roberts seconded the motion and the roll call vote was as follows: Ms. Roberts – yes; Mr. Bauer – yes; Ms. Robertson – yes; Mr. Fetzer – yes; Mr. Smith - yes. The motion carried and the Board recessed at 10:56 pm.

Ms. Roberts moved and Mr. Smith seconded the motion to reconvene. The roll call vote was as follows: Ms. Roberts – yes; Mr. Bauer – yes; Ms. Robertson – yes; Mr. Fetzer – yes; Mr. Smith - yes. The motion carried and the Board reconvened at 11:05 pm.

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The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-141:

With regard to BZA-2016-141 a request for Area Variance from Section 3.1.1.D to allow a lot split and the lots to be less than 150' wide (140' each proposed) and to allow a side-yard setback of 17.3' from an existing structure to the new property line (20' required) for the property located at 5741 Von Glahn Road:

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 for a single-family home.
2. The variance is **not** substantial because the request is for 10' less on each of the lot widths, essentially 2½' less on the side-yard setback and the existing deck could be modified in the future and possibly conform to the setback requirement.
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 there are at least 3 other properties on Von Glahn that are smaller than 150' wide (122', 120' & 90'). Additionally, there will be no visible change to the property and the creation of these 2 new lots would not negatively impact the surrounding properties (i.e. such as forcing an existing, neighboring lot to become a corner lot or more restrictive with setbacks).
4. The variance **would not** adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) all utilities are existing and should a new home ever be constructed on the "parent remainder" parcel, utilities could be provided.
5. The property owner **did** purchase the property with knowledge of the zoning restriction because the property owner indicates that they purchased the property with some knowledge of the zoning restriction, however their statement regarding the lot width requirement is not entirely accurate and property within the "A" Agricultural district been required to be a minimum of 150' wide since zoning was enacted in 1975.
6. The property owner's predicament **cannot** feasibly be obviated through some method other than a variance because even if they made the lot with the house and can comply with the requirements, the remainder would still require a width variance. Also, it is not an option to purchase additional land from either neighboring property due the placement of existing structures on those parcels and how they are used.
7. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance.

Mr. Fetzer 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) 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. Smith.

Roll Call Vote was as follows: Mr. Smith – yes; Mr. Fetzer – yes; Mr. Bauer – yes; Ms. Robertson – yes; Ms. Roberts - yes. The motion passed 5-0.

The Chair stated the case has been Approved and the applicants may pick up their permit, following the September 21st meeting.

Ms. Dale introduced the last case of the evening:

Adjudication Hearing
Case BZA #2016-143
6920 Sunview Drive

Request for an Area Variance from Section 5.8.1.C. to allow an in-ground pool to install an automatic, safety pool cover in lieu of a 42" fence around the perimeter. Laszlo Tromler, Owner/ Benjamin McKelvey, Esq., 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.

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Ms. Roberts moved to open the public hearing, seconded by Mr. Smith. All were in favor and the motion carried.

The Chair asked the Zoning Inspector to give an overview of this application.

Ms. Dale stated the applicant is proposing to install an in-ground pool without a fence surrounding the pool, and instead installing an automatic safety cover, in part due to HOA regulations. The proposed pool is 20' x 38' with roughly a 7' x 7' spa/hot tub which will replace much of the patio area at the rear of the home facing Sandusky Bay. The zoning resolution states in Section 5.8.1.C - The pool shall be fenced or elevated to a minimum height of 42 inches and shall have a gate which will be kept locked when not in use. Such fencing shall be designed in a manner so as to prohibit access by young children.

On June 17, 2016 a zoning permit was issued (Permit #2016-102) for this same pool because a glass fence was shown on the plans from the corners of the house out to a retaining wall. The retaining wall is well over 48" (4') high (closer to 5' high). Ms. Dale said it's up to her shoulders and is along the beach area in front of the home. There is a staircase that leads down to the beach areas as well. Each home has their own little private beach area. The staircase is also proposed to be protected with a locking gate to prevent anyone from coming up to the patio area from the beach. At the request of staff, the pool designer worked with the owner to come up with built-in planters/pillars on the retaining wall to prevent anyone from walking along the top of the wall and bypassing the glass fence or gate at the stairs. The zoning regulations do not regulate the material of the fence, only that one must be provided. The request now, despite that permit being issued, is to install the pool without a fence because the homeowner restrictions do not permit fences higher than 24" and is only permitted in a decorative manner. The applicant has indicated the Association rejected the owners' proposal for the glass fencing due to this private restriction. As a result, they feel their only option at this point is to request a variance from the zoning requirements to alleviate the need for a fence and propose instead an automated pool covering system to provide some protection and safety element. Ms. Dale explained that Exhibit F of the applicant's submission provides more detail about the system they are proposing to install and they have a representative present from the pool company as well, so she will defer to them to discuss the details of the alternative system they are proposing.

Ms. Dale commented that due to the number of homeowner associations in the Township and private deed restrictions, zoning does not enforce these private restrictions applied to certain real property within specific boundaries. Zoning regulations are applicable to all property equally within the Township based on zoning district or for specific uses and improvements. Ms. Dale concluded by reviewing the Decision Standards the Board would be considering.

Ben McKelvey, Esq. for the applicant said he submitted the application for his client, but would defer to his colleague Ross Eberlein to present this evening. Mrs. Robertson presented Mr. Eberlein the packet of information the Board received and he attested it was as submitted and was complete.

Mr. Eberlein presented the Board with additional exhibits for the record, which included Applicant's Exhibit H that included multiple letters of support from the neighbors within the subdivision. Applicant's Exhibit I which is Bayview Shores Condominium Declarations and Applicant's Exhibit J which is "Exhibit B - Bylaws of Bayview Shores Condominium Membership, Inc."

Mr. Eberlein stated he and Mr. McKelvey have been assisting Mr. Tromler through this process. Mr. Eberlein described where the property is located in the Township and stated this is a custom in-ground pool proposed. He stated they have a need for a variance from the zoning regulations because the condo declarations that govern the construction activities for all of the units in the subdivision conflict with the zoning requirements. Specifically, the condo declarations disallow any type of fencing that is not decorative, such as a garden fence or trellis. Fencing is prohibited. He stated they went so far as to ask the HOA whether that was something truly enforceable by them and whether we could get some type of variance from them. The HOA went to their legal counsel and they were told that yes it is enforceable and no there is not anything about a variance process and if Mr. Tromler wanted to change these rules, there would have to be a super majority vote to amend the declarations. Mr. Smith asked how that becomes the Township or this Boards problem. Mr. Ross said it gets into the practical issue, in this case, that it is easier to ask for a variance from the zoning requirements; but in addition, the safety aspects of the automated pool covering far outweigh the fencing requirements in the zoning resolution. Mr. Ross said its two things: 1.) It's a better option for Mr. Tromler and the condo development, and 2.) most importantly its safer for all the neighbors, the Association and the community. This is why we sought letters of support from the neighbors.

Ms. Roberts asked why, if this is such a safe option, why more people aren't using it. Mr. Eberlein said it's a fairly new technology and they have the pool contractor here with them who can talk more specifically about that. Mr. Smith said he would like to hear what he has to say.

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Mr. Michael Kerr, Hawaiian Pools, pool contractor for Mr. Tromlin came forward and was sworn in. Mr. Kerr said he's been building pools for 20+ years and he builds all over the State of Michigan and Ohio. The automated safety cover is a cover that is motorized and completely covers the pool. Mr. Smith asked what the material is made of. Mr. Kerr said he brought a sample with him to share. Mr. Smith said it's a fabric. Mr. Kerr agreed. Mr. Smith said it's a soft cover. Mr. Kerr said it's reinforced. Mr. Smith said but it's a soft cover, it has to have a load bearing capability. Mr. Kerr said it is and it does, 275 lbs. per square foot and it's very durable. Ms. Michael asked how long he has been using this material. Mr. Kerr said he's been with CoverStar for 14 years. Ms. Michael asked what he used before that. Mr. Kerr said there was another pool company called Automated Pool Covers. She asked if it was the same concept and Mr. Kerr said yes. Ms. Michael said when she lived in Michigan they had an automatic pool cover, but they also had fencing. Ms. Roberts said one person said this is a new technology, but you're telling us this has been around a long time. Mr. Ross said it is a new technology compared to what the zoning resolution addresses which was created in the 1970's. He asked Ms. Dale if that was the correct date. Ms. Dale said the zoning resolution was adopted in 1975, and fencing has been a requirement since then, but fencing is also a very common requirement in zoning resolutions across the State of Ohio. Mr. Eberlein agreed. Ms. Dale said these requirements have not been changed throughout the State.

Mr. Kerr said he is currently building a pool in Sandusky and they are using an automatic covering in-lieu of a fence there. Mr. Smith asked Mr. Kerr to describe that cover. Mr. Kerr offered to show a video. Mr. Smith asked if it is the same as what he just described and is proposing here. Mr. Kerr said it is. Mr. Smith asked why the documentation submitted with the packet describes this as a hard cover. Mr. Kerr said no it is not a hard cover. Mr. Smith asked then if the materials and documentation submitted with the variance request reflect something other than what they are proposing to actually do. Mr. Kerr asked Mr. Smith to be more specific. Mr. Smith said within the submittal there is a description of a Sandusky project. Mr. Kerr said that project is with the same automatic cover they are proposing here, same material, and same motor. Ms. Michael asked if that Sandusky project was also located within an association. Mr. Kerr said it is to his understanding that owner also had an Association. Mr. Smith said his issue is he would not call what they are showing as hard. Mr. Smith read from the Sandusky application included in the submitted which stated the application was for "a hard safety cover on a swimming pool in-lieu of a fence at 175 Sunset Drive".

Mr. Eberlein said that is an interesting point and they probably could have used a better word, there is a mesh system. Mr. Smith said they make both mesh and solid. Mr. Eberlein agreed. Mr. Smith said this is deceiving because there are also retractable hard coverings. Mr. Kerr said that is very, very rare that you can take a pool of this size and put a hard cover on it. Mr. Smith said, but it is possible and does exist. Mr. Kerr said it does exist, but it is usually for winter storage, not for daily use because of the weight and it's not foldable/retractable.

Mr. Kerr said he has used this system many times. He said to just give the Board an idea on where things are going in the industry, in the State of Indiana, a homeowner can use this system in-lieu of a fence. The State of Michigan, at the beginning of this year, just passed that rule also. He said it doesn't prohibit a County from enforcing stricter rules, but it just gives the Board an idea of where things are going with these safety covers. Nearly all manufacturers of safety covers are located in the State of Indiana because they have had this exception in place for many, many years. Improvements to these systems include the switches, which can be locked and are 5' in the air so a child can't reach them. Mr. Kerr said in his opinion a cover is actually safer than a fence because self-closing gates wear out, the ground erodes under fences where kids can get thru. Ms. Roberts said when one has a pool, the owner has to accept some responsibility for whatever happens to their fence, or gate or if someone happens to fall into the pool. Mr. Kerr said of course.

Ms. Michael asked if this is a solid piece of material because she had an automatic cover, but they also don't go straight across, they dip. Mr. Kerr said no, they float right on top of the water. She said no, it didn't float, but the issue was you could have rain water that would accumulate on the cover and a child could drown on top of the cover as well. Mr. Kerr said that on this system it has an automatic sensor, that when it senses water on the cover, it pumps the water off. Ms. Michael said she would play devil's advocate and asked what happens when that sensor doesn't work. Mr. Kerr said it goes back to the comment that the homeowner has to accept a certain amount of responsibility. Mr. Smith said nothing is fool-proof, everything has to be maintained.

There are certain areas within the State of Ohio who have also changed the rules to allow these automatic safety covers in-lieu of fencing. Ms. Roberts asked Mr. Kerr if they would be better off then going before the Township Trustees and asking for a text amendment to the zoning resolution. Mr. Kerr said he would have to defer to legal counsel on that because he thought they were in the best place to address this. Mr. Eberlein said what Ms. Roberts was talking about was a legislative change and what they are asking for is being able to proceed with their project. He asked the question on whether it's worth advocating to make that change in the resolution; it may very well

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be, but he doesn't know that it falls to them to do that, but in their opinion it would be worth adding that language to the zoning resolution. Mr. Eberlein said they have come to this Board because they feel it's a superior alternative to a fence.

Mr. Kerr said he would like to add one more thing, the Township's resolution requires a 42" barrier, and the National barrier requirement is 48". So when you consider that, maybe it's even a little better alternative.

Ms. Dale spoke up and said she wanted to understand this thing better herself because she will be one to have to potentially inspect it. Mr. Kerr asked if she had been to the property. She said she had and is familiar with the property and frankly she's not aware of another cover system like this anywhere in the Township, so this is why she's asking – she said she sees every pool installed in the Township, but that's not to say someone couldn't install one of these systems after the pool has passed inspections. Ms. Dale asked if this system is on a track that runs the length of the pool or not or if it just floats on the surface of the pool. Mr. Kerr said he brought a couple of brochures. He said when he builds a concrete pool, it has a concrete beam, then you put on the water tile and the track goes on top of the beam essentially, then they put the edging on and coping. He turned to Ms. Michael and said maybe you had a track that was mounted on a deck and then extends over the pool, but this track is underneath the coping, so there is no ability to tamper with the edging whatsoever. Ms. Dale asked if it is pulled tightly across the water. He referred to a picture in the brochure he handed out. Ms. Roberts asked if that same brochure could be passed around to the Board.

Mr. Smith said they included the ASTM code, at the code limits, there is no way you can get to the pool edges, and this is their alternative to meeting that requirement. Ms. Dale stated that the brochure would be entered into the record as Applicant's Exhibit K. Mr. Kerr offered again to show a video. Ms. Dale asked him to repeat again, that it holds a certain weight per every square foot. Mr. Kerr said yes, and Mr. Smith said a 275 lb. man can walk to the center of the cover and the system will not fall apart. Mr. Kerr said yes. Mr. Eberlein said Mr. Smith mentioned the ASTM requirements, and if he recalled, the requirement is to allow 2 grown adults to be able to walk out and grab a child by walking on top of this covering.

Ms. Roberts said, how, if a child wants to go in to get a sandwich and then some kid from the neighborhood comes over and there is a pool with no fence, and the cover hasn't been activated to close, how is that prevented from happening. Mr. Kerr said that again goes back to an owners due diligence, it's no different from a parent not having a lock or alarm on a sliding glass door to know when a kid might leave from inside the home. Ms. Roberts said she is talking about a neighborhood child, not the residents' child. She said if a fence is there it might prevent that child from getting in. Mr. Bauer said a gate could be left open too just as easily as not pushing a button for the pool cover. Mr. Smith said the concern is, is that a pool is an attractive nuisance. There is a huge liability when owning one. Mr. Kerr said he completely understands. Mr. Eberlein said he had an interesting point about leaving a pool unattended, and he would venture to guess that gates are often left open and that's a problem, but one of the features about this cover is it can be set to automatically close when there isn't anyone in the pool area. Mr. Kerr said there are motion sensors that can be installed to allow this to happen, but he personally feels the best way to do it is with a switch.

Mr. Smith said he had some exhibits to present and he had copies for the applicant and for the Board. Ms. Dale stated Township Exhibit #3 will be the Consumer Product Safety Commission recommendations for Safety Barrier Guidelines for Residential Pools, Township Exhibit #4 Appendix G of the International Residential Code from 2000 and Township Exhibit #5 will be the BOCA National Building Code recommendations for Barriers and Fencing for Swimming Pools from May 1, 1999. Mr. Smith said yes, those were the most recent he could find. Ms. Dale asked Mr. Eberlein if he had copies of all three and he said he did.

Mr. Smith said to refer to IRC, it says a 48" fence; it says for certain circumstances where the fence abuts the house, there are 3 options to add to the fence. One of those options is the pool cover, but you still have to do the fence. Mr. Smith said that to him that implies, and to have found 3 nationally recognized codes, that say the pool cover is not a substitute for the fence. Mr. Kerr asked where it specifically states that. Mr. Smith said it's the way it's formatted. Mr. Eberlein asked if the Township uses the IRC code. Mr. Smith said no, as Mr. Eberlein said before, Danbury Township is stuck in 1975. Mr. Smith said he was just looking for something that tells him there is an equivalency and he can't find anything even in nationally recognized codes. Mr. Eberlein asked if he came across the rules in Indiana or Michigan that Mr. Kerr had mentioned. Mr. Smith said no, that he found these 3 national codes. Ohio leaves pool safety regulations up to the lowest level of government, which would be Township, City, or Village, who have no idea they have that responsibility, which is why an awful lot of places don't have any regulations about it, which is why we are roughly 41 years behind. Mr. Smith said he was looking for something that would tell him that this covering would be equivalent because in his opinion, the Township assumes a liability also if the Board approves this

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and someday there is an accident, and we haven't applied the best-at-the-time standard, which is his concern. Mr. Eberlein asked if the Township has legal counsel, Ms. Dale said yes.

Mr. Kerr asked if he could interject for just a moment. He said the regulation they provided to the Board is from the ASTM which is the International authority on safety regulations. Mr. Smith said he disagreed and that they set the standard for the cover. He said in all three of the items he distributed, one will find the ASTM standard referenced for the cover. Mr. Kerr said, yes for the cover, but the ASTM is weighing in and saying this is sufficiently safe. Mr. Smith said he disagrees again because the ASTM is saying if you use a pool cover to satisfy these supplemental requirements, the pool cover has to meet certain standards. These 3 codes clearly indicate the covering is not a substitute, but is a supplement to the fencing. Mr. Eberlein said they are going to respectfully disagree. They have the pool contractor here who is currently working on projects and knows what the current standards are, has shared Indiana and Michigan standards and not standards that are over 15 years old. According to the expert we have here in the room, the state-of-the-art is being provided. Ms. Roberts said also with due respect, we are not located in Indiana or Michigan. Mr. Eberlein said, but the Board has made reference to outside jurisdictional authorities saying we have not come forward with any recognized authority providing for our option, and with all due respect, we don't believe that to be the case. We do believe it is recognized in other jurisdictions and in neighboring jurisdictions, including right over in Sandusky.

Ms. Dale said she was going to also interject to maybe put an end to this back and forth. She said the requirement is the requirement of the zoning resolution. A fence is required and they are asking for alleviation of that requirement. Period. The focus should be on our zoning requirement. They have presented what they feel is an appropriate alternative. Now it's up to the Board to decide, not whether or not what some other code recommends and whether it should apply, it just boils down to them asking for relief from our requirement.

Mr. Kerr said he saw Mr. Bauer looking at his phone watching a video and asked what he would prefer to protect a child. Mr. Bauer said that the brochure he handed out earlier showed 6 people standing in the middle of the cover. Mr. Kerr said he would prefer a cover any day over a fence. Mr. Bauer asked again about the weight. Mr. Kerr said its 275 point load. Mr. Bauer said he appreciated that because he would venture to say 6 people shown in the photo probably weigh more than 275 lbs.

Ms. Michael asked Mr. Kerr if the Sandusky cover was the first one he had installed in this area or Ohio. He said no. Mr. Smith asked what the Sandusky code said about covers. Mr. Eberlein said his recollection was that a 48" fence was required and the relief that was sought is essentially the same. Mr. Kerr said the Sandusky example is pretty close to the same set up where roughly 10' away you have this huge body of water that is infinitely more dangerous.

Mr. Eberlein asked if there were any further questions of them. Ms. Robertson said she didn't think so but just wanted to ask if there is anyone else with standing that wished to speak because she sees at least 3 other people.

Laszlo Tromler, owner came forward and was sworn in. Mr. Tromler said he has been a homeowner in this neighborhood for 12 years and thanked the Board for listening to their presentation. He said he thinks it's unfortunate that they have run into this conflict between the Township regulation and the HOA rules, but he does feel they have put forth a solid plan and appreciates their consideration. Mr. Smith asked him if he has discussed this option with his homeowners insurance that carries the liability and whether they consider it an acceptable alternative. He asked how that was relevant. Mr. Eberlein said he spoke to an insurance agent about this and they said it was a case-by-case issue and dependent on who the carrier of the policy was. Mr. Tromler said he will bring it up since it was discussed, but Westlake recently changed their regulations to allow these types of covers. Ms. Roberts said that's why she asked earlier if they had given any consideration to applying for a text amendment, because what they are asking this Board to do is deviate from the Township requirements. Mr. Eberlein stated that that is what everyone does before this Board. Ms. Roberts said he is correct, but not all requests necessarily mean safety is an issue or at risk, and for her, this is different. Mr. Tromler said he appreciated her previous comments about liability and assured the Board that he does take liability very seriously and that he views it no differently than if a child fell into the lake out in front of his home from his private beach or from his boat dock and he said he is trying to off-set some of that responsibility by providing some sort of safety feature as opposed to none at all. Ms. Roberts said that it really sounds like he is trying to do everything possible, and it's really too bad the HOA won't reconsider their requirement.

John Corsi, Vice-President of Bayview Shores Homeowners Association came forward and was sworn in. Ms. Robertson told Mr. Corsi that one of the Board's questions is why the Homeowner's Association would not allow the Tromler's to put the fence up and she hopes he can answer that. Mr. Corsi said in part because it's in the By-laws, but not only that, if he puts a fence up his neighbors views to the Bay on either side of him are blocked when they are out on their patios. It

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also opens up the door for a lot of other people to put fences up who have dogs. It's a nice development with million dollar homes. We encourage the Board to accept this variance because with the by-laws that we have there verse this protective cover; since we have approved it, we encourage that you approve it as well. We have no problem with the pool, just the fence. Mrs. Robertson asked if anyone else had a pool in the neighborhood. Mr. Corsi said no, this would be the first one. Mr. Bauer said, so basically it's a rock in a hard spot because you can't have a pool because we require to have a certain sized fence, yet the Association says you can't have a fence. Mr. Corsi said correct and the reason that requirement was made was because if you put a fence up, the neighbors now will have their views blocked. Mr. Corsi concluded by asking the Board again to consider the Associations decision as well to approve this alternative covering and as far as he is concerned, after seeing what it is, he feels it's safe. Mr. Corsi said he could understand why fences were required because the old coverings didn't do anything but to keep the leaves out of the pool, but that's not what this covering is.

Mr. Smith said those other codes he mentioned before, refer to the ASTM standard that this CoverStar covering is built to, but they do not recognize it as an equivalent substitute. Ohio does not have a Statewide, private swimming pool code. Mr. Kerr said he understands and that is in the process of changing. Mr. Kerr said all he can say is again after 20+ years in the business and going to educational things all over, it's an individual decision. But there are all types of areas, even in California, which has some of the strictest requirements, where you can put an automatic cover on verse a fence. He said in his opinion, in five years this will be the new norm.

Mrs. Robertson asked Mr. Corsi if there was anything more he would like to add. Mr. Corsi said he would just hope the Board would reconsider. All the neighbors are for this and hope the Tromler's can get the variance. Thank-you for your time.

Mr. Eberlein said it's been a long night and he had some closing comments, but he said he would spare the Board so they can continue with a decision. He said the Board knows what their position is and that they think this alternative is very safe and arguably a better device then a fence and we hope you agree. Thank-you for your time.

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.

Ms. Roberts 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; Mr. Bauer – yes; Ms. Robertson – yes; Ms. Michael – yes; Mr. Smith - yes. The motion carried and the Board recessed at 12:08 am.

Ms. Roberts moved and Mr. Smith seconded the motion to reconvene. The roll call vote was as follows: Ms. Roberts – yes; Mr. Bauer – yes; Ms. Robertson – yes; Ms. Michael – yes; Mr. Smith - yes. The motion carried and the Board reconvened at 12:44 am.

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-143:

With regard to BZA-2016-143 a request for Area Variance from Section 5.8.1.C. to allow an in-ground pool to install an automatic, safety pool cover in lieu of a 42" fence around the perimeter for the property located at 6920 Sunview Drive:

1. The property in question **will** yield a reasonable return and **can** be used beneficially without the variance because the property can continue to be used for its highest and best use as a single-family home/ condominium.
2. The variance **is** substantial because the present code requires a 42" fence as the safety protection.
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 following the Zoning regulations.
4. The variance **would not** adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because all necessary utilities needed to operate a pool are available and the issue of fencing is unaffected by services.
5. The property owner **did not** purchase the property with knowledge of the zoning restriction because according to the applicant's narrative statement, the property owner indicates that they were not aware of the conflict between the zoning resolution and homeowner association restrictions.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by petitioning their Homeowners Association.
7. The spirit and intent behind the zoning requirement **would not** be observed and substantial justice done by granting the variance because this is a safety related issue.

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

August 17, 202016

Mr. Smith 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) weigh more heavily to show that:

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

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

Motion Seconded by: Ms. Roberts.

Roll Call Vote was as follows: Mr. Smith – yes; Ms. Michael – yes; Mr. Bauer – no; Ms. Robertson – no; Ms. Roberts - yes. The motion passed 3-2. The Chair stated the case has been Denied.

Signing of Decision Sheets

Mrs. Robertson asked if the Board had the opportunity to review the Decision Sheet 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 decision sheet.

- a. **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.**

Ms. Roberts motioned to approve the decision sheet. Mr. Bauer seconded. All were in favor.

Approval of the July 20, 2016 Minutes

Mr. Smith moved and Mr. Bauer seconded a motion to approve the July 20, 2016 minutes. Roll Call Vote was as follows: Mr. Smith – yes; Mr. Bauer – yes; Ms. Roberts – Abstained; Mrs. Robertson – yes; Ms. Michael - yes. Motion carried.

Old Business

Ms. Dale shared with the Board that the Wahlers case they had been receiving information on at their homes from Ottawa County Court of Common Pleas was withdrawn.

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 Mr. Smith seconded the motion. All in attendance were in favor and the motion carried. The meeting was adjourned at 12:50 a.m.

Cheryl Harmsen
RECORDING SECRETARY

Carol Robertson
John William Smith Abstained
Joseph R. Fitz KAS
S. I. Miller

BOARD OF ZONING APPEALS