

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

September 21, 20 2016

The Danbury Township Board of Zoning Appeals was called to order at 6:30 p.m. by Chair Carol Robertson, at the Danbury Township Hall. The Pledge of Allegiance was recited. The roll call showed the following present: Ms. Carol Robinson, Mr. Bill Smith, Ms. Sherry Roberts, Ms. Loretta Grentzer, Alternate Joseph Fetzer and Alternate Sharon Michael. Mr. Bauer was excused. Also present were Kathryn Dale, Zoning, Planning Administrator and Cheryl Harmsen, Administrative and Zoning Assistant. Visitors present were Charles and Norma Beamer, Rich Gillum Esq., Scott Prephan, Mark Russel, Tom Kihlken, Dale Anderbery, Jim and Linda Obermat, Denise McManamon, Chris Mylonas, Sudhei Rao and Richard Price.

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 Mrs. Harmsen to introduce the first case of the evening.

Adjudication Hearing
Case BZA #2016-156
408 Oak

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

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 Mrs. Grentzer. All were in favor and the motion carried.

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

Ms. Dale stated the application is to add a decorative roof overhang just above the 1st floor windows on the front of the house that wraps around to the side of the home. The applicant refers to it as an "eye-brow" to protect the lower windows from the weather. The overhang is designed to match the existing main roof-line. It will project 16" on the front, 16" to the south and 12" on the north side, so as not to be any closer than the rest of the overhangs. The zoning code states that no building shall be altered except in conformity with the setback requirements of the district. There are exceptions in the code related to decorative features on a structure but it only applies to the height requirements, not setbacks. The applicant has presented this plan to the Lakeside HP-DRB, whom has approved the proposed plans and does support the request for the variance from the Township. This Board's decision is completely independent of Lakeside's. Ms. Dale reviewed the Decision Standards the Board would be considering.

Mr. Richard Price came forward and was sworn in and attested the documentation provided to the Board was what he submitted.

Mr. Price stated that he bought the home in 1992 and installed the windows and screens in about 1995. Mrs. Grentzer asked if there had been a change in weather patterns to make this necessary. Mr. Price replied currently, the rain comes inside. Ms. Roberts asked if the house to the south sticks out further towards the street, and if this would make his home stick out further than the house to the north. Mr. Price replied, he didn't think it would. Mr. Smith stated the tight space is the north side. The sixteen inches matches the front overhang. Mr. Price replied correct. Mrs. Grentzer asked for clarification of how much space was between this home and the one to the north. Mr. Price replied four inches, therefore it will not drip onto the neighbors' home. Ms. Roberts asked for clarification of the location on this home. Mr. Price stated it would go across the front and continues on the sides because the windows are eight feet back plus nine inches past that. Mr. Smith & Mrs. Robertson expressed they were surprised he would add a different pitch to the north side and make it project 12" instead of matching the 16". Mr. Price said he didn't want to encroach any closer to the house north of him and the pitches presented match the existing overhangs on the second story of the house. Mr. Smith clarified there will not be any downspouts on the front.

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

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

Mr. Smith moved to recess into executive session for the purpose of deliberating the merits of the case. Ms. Roberts seconded the motion and the roll call vote was as follows: Ms. Roberts – yes;

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

September 21, 20 2016

Mr. Fetzer – yes; Ms. Robertson – yes; Mr. Smith – yes; Ms. Grentzer - yes. The motion carried and the Board recessed at 6:45 pm.

Mr. Smith moved and Ms. Roberts seconded the motion to reconvene. The roll call vote was as follows: Ms. Roberts – yes; Mr. Fetzer – yes; Ms. Robertson – yes; Mr. Smith – yes; Ms. Grentzer - yes. The motion carried and the Board reconvened at 7:04 pm.

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-156:

With regard to BZA-2016-156, a request for an Area Variance from Section 3.1.5.D to allow for the construction of a decorative roof overhang to be located 8" from the northern, side property line (3' setback required) for the property located at 408 Oak Street.

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 but the proposed decorative addition will align with the existing house roofline.
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.
4. The variance **would not** adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.)
5. The property owner **did not** purchase the property with knowledge of the zoning restriction because the property owner has stated in their narrative statement that they were not aware that zoning restrictions applied.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by doing nothing.
7. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance.

Mrs. Grentzer moved that the Board adopts and makes the findings of fact as read by the recording secretary and that after considering and weighing these factors, the Board finds that Decision Standards(s) (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. Fetzer – yes; Mr. Smith – yes; Mrs. Grentzer – yes; Ms. Roberts – yes; Ms. Robertson – yes. Motion passed 5-0.

The Chair announced this application has been approved and the applicant may pick up their permit following the October 19, 2016 meeting.

Ms. Harmsen introduced the second case of the evening:

**Adjudication Hearing
Case BZA #2016-165
Harbor Bay Estates**

Request for a Major Modification in accordance with Section 6.2.4 & 4.3. to a previously approved Conditional Use (BZA-2015-009) to replace 7 structures/14 condo units with 6 detached garage buildings containing 86 garage bays. Michael Prosser, Prosser & Associates as Agent, American Title Agency, Inc. Owner/Applicant.

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 Mrs. Grentzer. All were in favor and the motion carried.

The Chair asked the Zoning Administrator to give an overview of the application. Ms. Dale stated Michael Prosser is not here this evening. Scott Prephan and Mark Russel are here to represent

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

September 21, 20 2016

Harbor Bay Estates. Ms. Dale stated in April 2013 the Board of Zoning Appeals approved 31 condominium buildings, with 122 units to be developed on 17.602 acres in the Harbor Bay Estates subdivision. In March 2015, the applicants came back asking to change the boundaries of the development to subdivide/ parcel off and sell approximately 5 acres to the Archeological Conservancy to preserve, research and protect the area believed to contain historical Indian artifacts and burial grounds. However, the applicant wanted to keep the density they were permitted with 17.602 acres, on the remaining 12.633 acres, which included 31 buildings & 122 dwelling units. The Major Modification for the boundary change and Area Variance for the increased density was approved by this Board.

The Applicant is now requesting another Major Modification due to their desire to provide storage and vehicle protection to the proposed condominium units, specifically for those buildings on the north side of Harbor Bay Drive. These particular buildings were not designed with garages, unlike the ones along Waterside Court. These buildings also lack storage rooms or space within or just outside the units for people to store seasonal items.

This proposal is to eliminate 7 duplex buildings/14 dwelling units and to construct 6 garage buildings containing a total of 86 garage bays. Each of the garage bays are 12' x 40'. 3 buildings will hold 10 of these bays, one building will consist of 12 bays and the 2 remaining structures will hold 22 bays each. The buildings are shown as meeting the 20' height requirement for detached accessory structures. These structures are proposed to be constructed in the general vicinity that the Alternate Vehicular Storage Area was proposed, but is now for enclosed storage as opposed to a gravel, fenced-in area. Staff did not have the applicant list a variance on the size restriction of Section 5.1.1.A because each bay/unit averages less than 1,200 sf. The applicant is proposing to try and limit the impact on the neighborhood by placing multiple bays/units in fewer, more uniform structures.

Over the past 12 years it has been generally accepted thru various Conditional Use applications, that a Condominium Development in this part of Harbor Bay Estates is acceptable and an appropriate use of land. The overall positioning of Condominium buildings remains the same. In 2015 a variance was granted approval for the density exceeding the 89 dwelling units allowed. 122 units were approved and are now being reduced to 108 with this proposal.

Ms. Dale shared with the Board that there were some specific zoning resolution sections she wanted to review. 1¼ (1.26) acres is required to be provided for open space. According to the applicant's calculations, they are providing 7.623 acres of open space. Should the BZA approve this Major Modification, Staff would request that a detailed plan is provided prior to the signing of the final decision sheet that specifically delineates the land to be used as open space. The applicant has indicated verbally that it is everything between structures and does not include any paved areas, but a clear, visual, mapped record should be provided.

"A & B"-styled buildings with the 90 units would require 180 parking spaces. There are 183 spaces provided. "C"-styled structures include 2-car tandem garages and individual drives that will be able to accommodate one (1) vehicle adequately. This requirement is satisfied and is unchanged. The applicant indicated they did not wish to provide these proposed garage structures in the existing parking lots because the project would have had to be redesigned for the accessory structures to meet the setback requirements or substantial variances would have had to of been requested.

A communal trash area is being provided at the NW end of the western garage building. The applicant indicates this will be surrounded by a landscape buffer, but doesn't specify any details about it. The prior condition and discussion regarding this communal dumpster area was that a 6' high fence with gate and a continuous row of evergreen trees has to be provided around this area within 3 months of the dumpsters being delivered.

This proposal with the garage structures is to eliminate outdoor storage and the applicant has noted it as such on the plan. Section 5.1.1 and the definition of Accessory Structure in Section 2.2.1 specifically state that detached garages are "*subordinate to the principal use or building*" and "*shall be permitted only on lots with a principal building already in existence*". While this area is across the street from the units in which they will be serving, they are on the same platted lot. The point here though is that the garages cannot be issued a permit prior to the units being constructed. There is currently only 1 condo building constructed containing 6 units. Staff will be permitted to issue a garage permit at the same time as a condo building permit is issued, but the number of garage bays issued and number of dwelling units should always match or be equal.

Ms. Dale concluded by reviewing the Decision Standards the Board would be considering.

Mrs. Grentzer asked where the dumpsters are being placed. Ms. Dale explained the proposed layout shows a location on the curve of Harbor Bay Drive that has five bin areas for dumpster enclosures. Ms. Roberts asked if this modification opens the previously approved Conditional Use. Ms. Dale stated, the way Zoning Resolution is worded, it is considered a major modification, then yes, this could be subjected to an entirely new application. It is a Major Modification, but there was

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

September 21, 20 2016

an approved, established layout, there is no change to that layout other than to eliminate some buildings, lowering the density and these garages are in the same vicinity as the Alternate Vehicle Storage area was proposed. The permit to construct the condominiums still has time available. Therefore it could revert back to that prior approval, even if this request is not approved.

Scott Prephan, developer of the property, came forward and was sworn in and attested the documentation provided to the Board was what he submitted. Mr. Prephan stated they submitted a color rendering that shows the layout. There have been more and more requests for a garage to go along with the sale of the units because there is not enough storage capacity in the units themselves. Therefore this plan has been provided that includes up to eighty six garage bays. The need for them is based on market demand and no one is going to be forced to buy a garage unit. The siding and roofing are the same exterior materials as the existing condo units. The current vehicle storage area has dozens of boat trailers scattered everywhere that were unsightly and the owners were told that they would not be allowed to park trailers there raising concerns about where they would store trailers. The storage units are only available to condo owners and not available for rent or sale to people outside of this project. The units look like a standard garage. Recently this board approved additional garages at Roche Point, where they already have two car garages per unit. There was a reduction in the number of units in order to meet the density requirement. These garages will be built in the area where the new units will be constructed. To minimize perceived negative impact, there will be a buffering of shrubs between these units. A six foot fence will be around the garbage bins with landscaping as the board directs. These dumpsters will be forty feet off the property line. Mr. Smith asked for the extent of the fencing. Mr. Prephan stated the dumpsters on all four sides will be completely fenced in. Mrs. Grentzer asked for clarification on the location of the Preservation Area. Mr. Prephan stated it is a sand pit with a small pond that is lower than the rest of the property and typically doesn't hold water. None of the Preservation Area will be touched just mowed and maintained. There is a small family cemetery located in this area from previous owners. Mr. Prephan showed on the plan the area of past, current and future planned development.

Mark Russel came forward and was sworn in stating he believes the buildings will be back to back with some separation. Mr. Smith stated the plan shows the buildings as abutted and the board would need to see a modified plan showing separation. Discussion took place on whether there was room to do that and show it properly on the plan. Due to the expanse driveways between the proposed garage buildings, Mr. Russell believed that could be done and shown correctly.

Mr. Robertson called upon Mr. & Mrs. Charles and Norma Beamer from the sign-in sheet. They stated they didn't wish to speak.

Richard Gillum, Esq. with Kocher & Gillum, came forward and stated he believes Mr. Prephan has addressed our concerns and that he is representing Cove on the Bay, LLC. The concern was the eighty six parking units would not be a storage unit open the public and are asking that be a part of the condition. Other than that, there isn't any objection to the project. Mr. Smith asked if the units would be deeded with a condo. Mr. Prephan replied these would be on limited common space, identified in the condominium documents and owned by the Association. Mr. Gillium stated the main concern is that the use of the garage corresponds to the occupant of the condo unit. Ms. Roberts asked for clarification of who can rent the garage unit. Mr. Prephan stated no one outside Harbor Bay Estates Association can utilize this storage.

Tom Kihlken, 2863 Waterside Court, came forward and was sworn in. Mr. Kihlken asked for clarification regarding Staff Recommendation number 2, and the timing of the buildings, the garage unit would be built as the corresponding condominium unit is built. The Applicant has also indicated he would make the units available to existing homeowners as opposed to condominium units. Ms. Dale stated the Staff recommends in number 2, that, the garage buildings are not issued a permit until the same or equal number of dwelling units exist. Mr. Kihlken said he would suggest changing the wording from "dwelling units" to "condominium units". Ms. Dale asked Mr. Kihlken if he is opposed to making these units available to existing homeowners on individual single-family lots, she said he commented on it, but didn't indicate if he was in support of that or not. Mr. Kihlken stated there needs to be a limit on the number of garages for aesthetic purposes and it would be harmonious to have the same number of garages as condominium units. Ms. Roberts stated adding the word condominium is a good idea. Mr. Prephan stated, the recent approval at Roche Point, where all of those storage units are being built for people who already have two car garages, these home owners should have the same flexibility. Ms. Dale stated Roche Point Condominiums owners asked that their proposed buildings be an accessory to their condo units and were deeding them to their condos. Zoning would allow each home owner on a single-family lot to place a detached garage on their own individual lot. Roche Point property is platted differently, anotherwords, the garage and condos are all on the same platted lot even though they are across the street, much like these proposed garages are on the same platted lot as the condos they would be serving. However, these garage units would be on a separate lot from the single-family lots and more than fifty feet away. The zoning resolution states

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

September 21, 20 2016

that an accessory structure has to be on the same lot as the principal structure unless said accessory structure is located on a lot within 50 feet of its principal structures lot. Ms. Dale stated now that it has been discussed, Mr. Kihlken has a valid request.

Chris Mylonas, 2633 South Waterside Court came forward and was sworn in. Mr. Mylonas stated he is one of the 35 home owners with garages in this existing project and feels it would be detrimental to our property values to build these storage units. The existing condominiums have six units of which one or two have been sold over the last three years and this request would be detrimental to the property values because the design doesn't match the existing properties' design. It would be easier to sell these condominium units if they came with an attached garage. It's not practical to park a vehicle in these units and walk to your condominium unit during the winter months. Homes without attached garages will deter the surrounding home values. Mr. Smith stated the homes without garages was previously approved by the board, therefore that point is not open for discussion. Mr. Mylonas asked if the board previously approved the condominium with garages. Mr. Smith replied no, they have a parking lot. Mr. Mylonas stated this request is to supplement the condominium project. Mr. Smith agreed. Mr. Mylonas stated therefore, when this project is fully developed, we will be looking at 86 separate, detached garages which would decrease our property values. Mrs. Grentzer asked if his home is located on the Bay. Mr. Mylonas replied, now people coming to visit our home will have to stare at these 86 garages. Ms. Dale asked if Mr. Mylonas had anything to substantiate his testimony on value or if it is just his opinion. Mr. Mylanos stated there is a unit that does not have a garage and has been on the market for three years. Ms. Roberts stated being in real estate, everything has dropped in value, therefore it may just be the market place. Ms. Roberts asked what would he propose. Mr. Mylano replied dwelling units be built with attached garages. Mr. Mylano asked if homes sell for more with a garage or without. Ms. Roberts replied, with a garage. Mr. Mylano, asked does a home with an attached garage sell for more than with a detached garage. Ms. Roberts stated that determination is out of her area of expertise. Mr. Prephan stated he disagreed with Mr. Mylano, first of all, he talked about staring at 86 garages, landscaping buffers will be planted around each garage. When looking at the location of Mr. Mylano's property, he is not close to these garage units and there is plenty of green space in between. This request is driven by what potential buyers are requesting. It is false information these units have been for sale for three years. An offer has been placed on an uncompleted unit and there is an offer on a second unit. It's a matter of personal choice weather they want to buy a storage unit or not. Ms. Roberts asked if there are separate associations for the homes and condominiums. Mr. Prephan replied, there is one master association and each condominium project has its own association. Mr. Mylano asked for clarification; if only the condo unit owners are able to buy a garage unit and if there is a [single-family] home owner in the Association, they are not allowed to buy a unit. Ms. Dale stated that is what she heard in their testimony, the ninety condo unit owners would have the ability to buy them. Mrs. Grentzer asked for clarification, stating none of the condo units will have garages attached. Mr. Prephan answered no because there is very limited space. Ms. Roberts asked if the association fee would go up. Mr. Prephan replied there is a separate association for the garage units and have a separate association fee.

Sudhei Rao, 2669 Waterside Court, came forward and was sworn in. Mr. Rao stated Mr. Prephan was the first and he was the second to purchase in this development. At the time of the purchase, the sketches showed this development would be a good investment. The aesthetics of this area are most important. It has taken six to seven years to install the gate and get it working. It's taken six years of struggles to get the harbor developed and recently the project has taken off and approving this would turn back the appreciation of this investment. The proposed units should be designed to look like a home. It is disheartening if it is approved as proposed and he requested the board takes this as a serious decision. Mr. Grentzer asked the location of Mr. Rao's property. Mr. Rao replied it's on the Bay. Mr. Prephan replied these garages in every way, shape and form are the same as the condos. Same materials as on the condos. The garages will stimulate the project to stay on a positive track. It is an option if the condo owners want to purchase or not. Mr. Roberts asked how many storage units can each condo purchase. Mr. Prephan replied that limiting the number of units a condo owner could own has not been previously considered. What ends up there will be based on market demand. There will probably be a limit of two units per condo unit at first. The purpose is to have these garages available to sell condos.

Mr. Rao asked if a requirement can be added requiring a deed. The Chair stated that similar language has already been recommended. There is a one to one requirement in the proposed conditions. Ms. Roberts stated the wording is based on condo units built, not sold. Mr. Rao is saying it should be on the sold. Mr. Rao stated if they built eighteen condos with corresponding garage units, and four have not sold another garage unit would not be built. Ms. Dale stated that is why the conditions states the number of garage units has to correspond to the number of condo units and ownership is not controlled by zoning. They have six condo units now, and this was approved, they

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

September 21, 20 2016

could only get a permit to build six garage bays, which would not be a complete building. Ms. Dale stated that if the first owner decides to buy all six bays, zoning can't control ownership.

Denise McMananon, 2293 Harbor Bay, came forward and was sworn in. Ms. McMananon stated if this was refused, the developer has the ability to fence this alternative vehicle storage area and make it an open air storage area. The Chair stated she was correct.

Mr. Kihlken stated they were told that multiple units could be sold to the [single-family] home owners. The Chair stated it has been clarified about the home owners. Mr. Kihlken stated zoning states they don't regulate ownership, who says they can't have multiple units owned by one owner. Mr. Smith stated your condo association could take legal action. Ms. Roberts asked how does the condo documents address this matter. Mr. Prephan stated there is a draft version of these documents expected to be finalized next week. They could not be completed until there was an official approval for these garage units. There was discussion that what while zoning can't control the ownership entirely, what has been presented is that these units are being provided for the condominiums and to do otherwise would not have been the basis of the approval, if approved. Mr. Prephan said he understood and said there would not be an advantage to selling the garages to anyone other than the condominium buyers because it could negatively impact them from being able to sell the condominium units. He said he saw no advantage to selling them to anyone other than the condominium units. He also commented that they may never build all 86 garages but they wanted to have that many approved if that many condominium buyers wanted one.

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, Mrs. Grentzer 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. Mrs. Grentzer seconded the motion and the roll call vote was as follows: Ms. Roberts – yes; Mr. Fetzer – yes; Ms. Robertson – yes; Mrs. Grentzer – yes; Mr. Smith - yes. The motion carried and the Board recessed at 8:15 pm.

Mr. Smith moved and Mrs. Grentzer seconded the motion to reconvene. The roll call vote was as follows: Ms. Roberts – yes; Mr. Fetzer – yes; Ms. Robertson – yes; Mr. Smith – yes; Mrs. Grentzer - yes. The motion carried and the Board reconvened at 8:55 pm.

The Chair asked Mrs. Harmsen read the Findings of Fact for BZA Case #2016-165:

With regard to Case # BZA-2016-165, being a request for a Major Modification in accordance with Section 6.2.4 & 4.3 to a previously approved Conditional Use (BZA-2015-009) to replace 7 structures/14 condo units with 6 detached garage buildings containing 86 garage bays for the property located at Harbor Bay Estates (AKA Marblehead Estates) Lot 53A, Plat V (PIN# 0140469406735011).

1. The Conditional Use **will** be harmonious with and in accordance with the **general** objectives of the Danbury Township land use plan because it is a permitted use with a comprehensive plan for development that has not changed from the original development plan. The area is designated as "Recreational Commercial" but has been approved multiple times for high density residential and condominiums.
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; the applicant has indicated that the garage structures are to serve the existing and future residential condominium buildings and will not be available to be used by the general public or the single- family homeowners.
3. The Conditional Use **will not** be hazardous or disturbing to existing or future neighboring uses because; condominiums have been approved multiple times as an appropriate use for this overall development and the Board has found that the developer has met or exceeded the zoning requirements.
4. The Conditional Use **will not** be detrimental to property in the immediate vicinity or to the community as a whole because; Same response as stated above in #3.
5. The Conditional Use **will** be served adequately by essential public facility and services because all major utilities are already in place.
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 street system is already in place and will continue to be used by existing property owners. There will be no increase in traffic as a result of this request.

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

September 21, 20 2016

7. Other relevant factors, if any, considered include these buildings would eliminate the need for condominium owners from having to store their items in an open field.

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

- a. The request is consistent with the Conditional Uses specifically mentioned in the "R-C" Recreational Commercial Zoning District and the intent and purpose of the zoning resolution; and
- b. The applicant **has** proven that potential negative impacts of elements such as location, size and extent of facilities and operations, site design, traffic generation, site access, and potential impact upon public facilities will be adequately addressed.
- c. 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:**

- 1.) That, a 6' high solid fence with gate is provided as well as a continuous row of evergreen trees are installed around the Trash Receptacle Area within 3 months after such area is created and dumpsters are delivered.
- 2.) That, the garage bays are not issued a permit until the same or equal number of condominium dwelling units exist. Permits may be issued at the same time a condo building is issued, but the garage bays are specifically prohibited from being constructed and completed prior to the corresponding condominium unit.
- 3.) That, prior to the signing of the Decision Sheet at the October 19, 2016 BZA meeting, that a detailed open space plan with confirmation of the area calculations is submitted to the Zoning Administrator by September 30, 2016, for the Board's approval and acceptance.
- 4.) That, prior to the signing of the Decision Sheet at the October 19, 2016 BZA meeting, a revised plot plan drawing, with the necessary space between back to back buildings shown is submitted to the Zoning Administrator by September 30, 2016, for the Board's approval and acceptance.

Motion Seconded by: Mr. Fetzer.

Roll Call Vote was as follows: Mr. Fetzer – yes; Mr. Smith – yes; Ms. Roberts – no; Mrs. Grentzer – yes; Ms. Robertson – yes. The Chair announced this application has been approved 4-1. The plot plan and the open space plan are needed by September 30th. The applicant may pick up their permits following the October 19, 2016 meeting.

Signing of Decision Sheets

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

- a. **BZA-2016-108 5401 Maritime Shoreway.** Request for a Conditional Use to allow for a 4 unit Condominium Development in accordance with Section 3.1.10.C.iii and Section 4.3. **West Harbor Marina, LLC (William Brown), Owner/ Bree Brown, Agent.**

Ms. Dale stated one of the conditions the board placed in the Findings of Fact was that they had to provide alternative vehicle storage area plan. They are showing two spaces behind the building. Dimensions are four feet by eight feet and identified as screened alternative vehicle storage areas. The fence is seven feet high, has a gate, and the material is solid white vinyl. There are no size dimension requirements in the code and it does state it is not for boats.

Mr. Smith moved to approve the Decision Sheet. Ms. Robertson seconded. Voice Vote: All were in favor. None opposed, Ms. Roberts abstained. The motion carried.

Ms. Roberts asked Ms. Dale if she viewed the parking lot side as the side away from the water. Ms. Dale agreed. Ms. Roberts stated that location may be in conflict with what was recently mediated in court. That it may be in The Landings parking area. Ms. Dale stated what

Held

September 21, 20 2016

they're showing, is in the hatched area on the plan around the building. Ms. Roberts stated the easements are not shown on the plan. Ms. Dale stated right now there is a bump out between the two staircases, and where these alternate vehicle storage areas would be located, not out in the parking lot.

- b. **BZA-2016-140 420 E. Sixth Street, PIN #0140462305957000.** 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, Owner/ Michael Shade, Esq., Agent.**

Ms. Roberts moved to approve the Decision Sheet. Mr. Fetzer seconded. Mr. Smith Abstained. Voice Vote: All were in favor. None opposed the motion carried.

- c. **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.**

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

- d. **BZA-2016-138 Near 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.**

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

- e. **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 Bemmer, Owner/Applicant.**

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

- f. **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.**

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

- g. **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.**

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

Approval of the August 17, 2016 Minutes

Mr. Smith moved to approve the August 17, 2016 minutes and Mr. Fetzer seconded a motion to approve the August 17, 2016 minutes. Ms. Roberts and Mr. Smith Abstained. Voice Vote: All were in favor. None opposed the motion carried.

Old Business

There was none.

New Business

Ms. Roberts stated that ex parte conversations with anyone who has standing should be shared with the other board members. Discussion centered around board members sharing the content of an ex parte conversation with all the board members during a hearing. Mrs. Robertson asked where this is coming from because they have all been trained that no discussion is permitted prior to a hearing. Ms. Dale stated she would present this request for legal to review.

RECORD OF PROCEEDINGS

Minutes of

Danbury Township Board of Zoning Appeals

Meeting

DAYTON LEGAL BLANK, INC., FORM NO. 10148

Held

September 21, 20 2016

Other Business

There was none.

Reports and Communications from Members and Staff

The Chair asked if there is an expected cases for the next meeting. Ms. Dale stated at this point there is one.

Adjournment

Ms. Roberts moved to adjourn the meeting and Mrs. Smith seconded the motion. All in attendance were in favor and the motion carried. The meeting was adjourned at 9:18 p.m.

Cheryl Harmsen
RECORDING SECRETARY

Carol Robertson

Laurel Stentzer

Sherry Roberts

Joseph R. Fitz

John William Smith
BOARD OF ZONING APPEALS