

**RECORD OF PROCEEDINGS
Danbury Township Board of Zoning Appeals**

Minutes of

Meeting

BEAR GRAPHICS 800-325-8094 FORM NO. 10148

Held April 17, 20 19

The Danbury Township Board of Zoning Appeals was called to order at 6:30 p.m. by Chair, Sherry Roberts, at the Danbury Township Hall. The Pledge of Allegiance was recited. The roll call showed the following members present: Ms. Sherry Roberts, Mr. Joseph Fetzer, Mrs. Loretta Grentzer, and Ms. Sharon Michael. Mr. Brad Bauer and Alternates, Ms. Cathy Bertovich and Mr. Clyde Shetler were excused. Also present were Kathryn Dale, Zoning & Planning Administrator. Visitors present were Peter Corrado, David Gulau. Sandra Pick, Mark & Kathleen Lucas, Warren & Phyllis Cermak and David Lewis, Lewis Land Professionals.

Ms. Dale read the rules of order for the meeting proceedings. At the conclusion of the meeting proceedings, Ms. Dale shared that only 4 members are present this evening. Each case will need majority vote (3-1) for a decision to be made. Should a vote result in a tie (2-2), then the application will automatically be placed on next month's agenda. Ms. Dale offered each applicant the option to continue on their own accord before the meeting proceeds. All applicants indicated they wished to move on this evening.

The Chair asked Mrs. Dale if all the documents relating to the case had been received and were in proper order. She indicated that they were. The Chair swore-in the Zoning and Planning Administrator, Kathryn Dale.

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

**Adjudication Hearing
Case BZA #2019-033
Lighthouse Bluffs III & IV**

Request for a Conditional Use in accordance with Section 3.1.4.C.v. & Section 4.7 to allow for a 47 site Single-Family Cluster Housing Community. Lewis Land Professionals, Agent/Ken Cleveland & JakeJosh, LLC, Owner.

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none. Mr. Fetzer moved and Ms. Michael seconded the motion to open the public hearing. All were in favor and the motion carried.

The Chair asked the Zoning Administrator to give an overview of this application. Ms. Dale stated Cluster Housing Communities are Conditional Uses in the "R-3" High Density Residential District and according to the Danbury Township Zoning Resolution, Section 4.7, Final Site Development Plans, Amendments to, and Staged/Phased Developments require review and approval by the Board of Zoning Appeals. It has been 4 years (2015) since Phases III & IV were last presented to this Board, and over 24 years since the original approval. These phases, while consistent and lower in density than originally intended, need to go through the formality of review and approval by the Board of Zoning Appeals.

The applicant received Preliminary Plat approvals also back in 2015 from Ottawa County Regional Planning for Phase III & IV, but never filed final plats. There were also some modifications made in Phase II by eliminating duplex units and replacing them with Detached/SF lots. Those homes have all been constructed or are currently under construction, but no further action was taken by the developer on Phase III & IV.

The original, preliminary development plan for Lighthouse Bluffs was approved by the Board of Zoning Appeals in 1995 as a Cluster Housing Community with a total of 130 units (90duplex/40 SF). In 2001, Phase II was approved before the BZA containing 38 duplex lots and subsequently recorded. In 2007, the developer came back to the Board to present Phase III & IV, reducing the total number of units to 125, but also requested a variance/reduction in the building separation requirement for the whole development, which was denied, and by default the Phases were also denied. As aforementioned, in 2015, the proposal was to eliminate 16 Duplex units, replace them with Detached/SF lots in Phase II and reduce the overall density of the entire development to 117 units. Phase III & IV were also approved as a Minor Amendment. Extensions are a possibility, but were never requested.

At the time the Preliminary Development Plan was approved in 1995, there was no expiration on Conditional Uses, so the plan is still viewed as being valid. Due to the time lapse between Final approvals, and even though the plans have not really changed, a new hearing is required because the current code limits approvals to 1-year from the date of approval of the Final Plan. There is no specific criteria for approval of each Final Phase.

Per Section 4.7 of the Danbury Zoning Resolution Cluster Housing Community.

- 25' setback from all boundary lines of development site. (Satisfied)
- 20' setback from a public or private street ROW (Satisfied)
- 20' building separation between duplex structures and SF Structures (Satisfied)
- 10' building separation between SF structures (Satisfied – 15' proposed)

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Allowable Density: 152 units. (116 proposed)

Ms. Dale concluded by reviewing the decision criteria the Board would be considering for this request.

David Lewis, Agent, Lewis Land Professionals, 8691 Wadsworth Road, Ste. 100, Wadsworth, Ohio came forward and were sworn in. Mr. Lewis reviewed the paperwork and stated it was as they submitted. Mr. Lewis stated that he presented the original plan back in 1995 and it is hard to believe that it has been that many years. He shared that he worked with Mr. Cleveland as his project engineer on this back then, but now Mr. Cleveland is getting older and is in an assisted living center but it has been his goal to complete the project. Mr. Cleveland has worked out an agreement with one of his long-time employees and that is where the JakeJosh, LLC comes in. That gentleman's name is John Sumodi and he is very familiar with the project and has some other property up in this area. Mr. Lewis said that Ms. Dale did an excellent job of summarizing everything. He pointed to a presentation board identifying Phase III and Phase IV. He stated that it is their intention to build the streets and utilities all in one phase. He said the reason they are still labeling it Phase III & IV is because they cannot build all the homes at once, so they would plat half the lots now and the rest later, but the infrastructure would all get completed. He said they want to ensure that the street and improvements get completed in case the housing market takes a dip and all the houses don't get built.

Mr. Lewis said that they have submitted to Ottawa County Regional Planning and have received conditional approval for the Preliminary Plat of these two phases again. He said they have also submitted the improvement plans to the County Engineer for the utilities and the street. Those were submitted four years ago as well and approved, but since Mr. Cleveland started having some difficulty with his health, nothing happened and the approvals all expired. This year we already have a contractor lined-up and are hopeful to move forward in the next few months, obviously depending on County Engineering approval. One of the changes with the engineering is that we did add a storm water management basin along Northshore Blvd. that will be a depression that when there is a hard rain, water will come thru a storm sewer pipe and discharge into this area to be retained and then drain into the existing 18" storm sewer that runs down along the west side of Rockport Subdivision. Mr. Lewis stated that he does not know what the status is of this storm sewer easement. He stated to the Board that when Rockport Subdivision was created, that for whatever reason the easement was left off that plat by accident and was recorded. He said it is to his understanding that the County Engineer has been working with the County Commissioners on this, but he does not know if it has been recorded yet.

Ms. Dale stated she did not provide the Board the information that is happening with that drainage easement, in-part because zoning has no regulatory authority over it or involvement, so she did not want to bog down the Board with information that really is not germane to their decision. Because this is being created as single-family platted lots, the developer is also required to go through the subdivision review process with the County which includes essentially a 4-step review. Before the subdivision is even considered for a Final Plat, and definitely before they get to a Record Plat, all the drainage issues will have to be resolved with the County to the County's satisfaction. Mr. Lewis said that was all correct and they have submitted drainage calculations to the County Engineers office with the added storm water management basin.

Mr. Lewis said that the density has been reduced over the years because it seems as though there is a higher demand for slightly larger units, detached. He said he believes that these houses will primarily be ranch homes with 2-car garages. There has been no change in the open space and the clubhouse has already been built which has already been turned over to the homeowners association.

Ms. Grentzer asked if the rest of these homes will become part of the homeowners association. Mr. Lewis said that they would. Ms. Grentzer asked if the last house currently being built will be similar to those in these next phases. Mr. Lewis said yes, but possibly a little smaller because the lot that that house is on is slightly wider & larger as a result of combining area that was originally supposed to contain a duplex unit. She said she was curious because lots 79-81 seem to also be a little larger, so she was just asking for clarification that all lots will be single-family homes. Mr. Lewis said yes and they will all meet the minimum building separation; they are actually proposing more than the minimum 10' requirement, 15' is proposed.

Mark Lucas, 399 Lighthouse Oval, Marblehead came forward and was sworn in. Mr. Lucas stated he is the President of the Lighthouse Bluffs homeowners association, they have reviewed the paperwork and worked with Mr. Cleveland a few years ago when they changed the layout in Phase II from doubles to singles. He stated the association is fully in support of the request because when they did switch from doubles to singles, the lots sold quicker and they are looking forward to the subdivision being completed. Mr. Lucas said the association Board also voted on this plan 4 days ago, also approving it.

Warren Cermak, 401 Rockport, Marblehead came forward and was sworn in. He said he just wanted to comment that the sewer issue has been around for a while, almost a year, and he would just like to be assured that the storm sewer that does not have an easement, that before all the construction

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is done that it is straightened out. He stated he does understand that it may not be in this Board's jurisdiction.

Ms. Dale reiterated that it is not in zoning's jurisdiction, but it is part of the subdivision process thru the County. All those issues will have to be resolved before the Final Plat is signed off by the County Engineer's office. Mr. Cermak says he hears what she is saying, but what happened back in 1996? That should have been addressed then, not now in 2019. Ms. Dale said she can understand, but she can't answer why it happened. She speculated that it was her guess is that, that is when digital prints were being done and someone erroneously forgot to turn the easement layer back on and it was just a mistake, but nonetheless, it was not included and all parties are trying to now make it right. She clarified that this Board is simply deciding whether the remainder of this property can continue to be used as Clustered Housing Community. She did explain that under the straight zoning, a subdivision would have been allowed, but the lots would have been required to be slightly larger as well as the street. With the "Cluster Housing Community" designation, the lots and street can be smaller and overall, the density a little higher only because more lots could 'fit' verse what would fit if the lots were full-size. Ms. Cermak stated he understands, thanked them for their time, but just wanted his concerns about getting the easement ironed out on the record.

There were no further questions from the Board and there was no one else with standing who wished to testify.

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

Ms. Grentzer motioned to recess into executive session to deliberate the merits of the case. Ms. Michael seconded the motion and the roll call vote was as follows: Ms. Michael – yes; Mr. Fetzer – yes; Mrs. Grentzer – yes; Mrs. Roberts – yes. The motion carried and the Board recessed at 6:56 pm.

Ms. Michael moved and Mr. Fetzer seconded the motion to reconvene. The roll call vote was as follows: Ms. Michael – yes; Mr. Fetzer – yes; Mrs. Grentzer – yes; Mrs. Roberts – yes. The Board reconvened at 7:06p.m.

The Chair asked Mrs. Dale to read the Findings of Fact for BZA Case #2019-033:

With regard to Case #BZA-2019-033 being a request for a Conditional Use in accordance with 3.1.4.C.v. & Section 4.7 to allow for a 47 site Single-Family Cluster Housing Community for Phase III & IV of Lighthouse Bluffs Subdivision:

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 identifies this area as High Density Residential and encourages diverse and affordable housing options.
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 request **does not** change the use or density to a more intense use or density than previously permitted or approved in the original plan for the property.
3. The Conditional Use **will not** be hazardous or disturbing to existing or future neighboring uses because these are single-family homes and there is a decrease in the density from 130 units to 116 units.
4. The Conditional Use **will not** be detrimental to property in the immediate vicinity or to the community as a whole.
5. The Conditional Use **will** be served adequately by essential public facility and services because services have been planned for this development for some time and are available to the site.
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 main entrance is pre-existing and the proposed street extension creates a loop tying back into itself.
7. Other relevant factors, if any, considered include: None.

Ms. Grentzer 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-3" High Density Residential zoning district and after considering and weighing these factors, the Board finds that Decision Standards(s) (1) (2) (3) weigh more heavily to show that:

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- a. The request is consistent with the Conditional Uses specifically mentioned in the "R-3" High Density Residential Zoning District and the intent and purpose of the zoning resolution; and
- 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**. Motion Seconded by Mr. Fetzer. Roll Call Vote was as follows: Ms. Michael – yes; Mr. Fetzer – yes; Mrs. Grentzer – yes; Mrs. Roberts – yes. Vote 4-0 the motion passed.

The Chair asked Mrs. Dale to introduce the second case of the evening.

Adjudication Hearing
Case BZA #2019-040
250 Margaret

Request for an Area Variance to Section 5.1.1.A.ii. to allow for a 24' x 26' (624s.f.) addition onto an existing detached garage that will exceed the allowable size (1,200 cumulative s.f. allowed/ 1,488s.f. proposed). David Gulau, Owner.

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none. Mr. Fetzer moved and Ms. Michael seconded the motion to open the public hearing. All were in favor and the motion carried.

The Chair asked the Zoning Administrator to give an overview of this application. Ms. Dale stated The applicant is proposing to add on a 24' x 26' (624s.f.) addition onto the rear of his existing 24' x 26' (864s.f.) detached garage. The zoning resolution requires that the total cumulative square footage of all accessory buildings does not exceed 1,200s.f. This garage with the addition will contain 1,488s.f. All other requirements as far as height, setbacks and lot coverage will be met. According to permit records, the original garage was issued a permit in April 1976 (Permit #1976-020). Ms. Dale concluded by reviewing the Duncan Standards that need to be taken into consideration when deciding this request.

Mr. David Gulau, Owner, 250 Margaret, Marblehead came forward and was sworn in. Mr. Gulau reviewed the paperwork and stated it was as he submitted. He stated that his issue is a classic issue because he has a classic disease. He stated he has classic boats and cars and he doesn't have enough space. Mr. Gulau said he came up with this proposal partially because he has a 4-post lift so he can work underneath without having to crawl underneath these items, which is getting harder with age to be able to do. He said he had the 4-post lift at another property that he has since sold. He said if he were to put it into the existing structure he would have to raise the roof and put a lot of money into an older building, so he'd instead like to just put an addition onto the back of the existing building, high enough to accommodate the lift and the addition would be out of the way. He said the houses to the south and southwest are not visible due to arborvitaes and another garage and it would not block anyone's view. Mr. Gulau submitted a photograph of what his rear yard looks like. Ms. Dale stated this will be entered as Gulau Exhibit #3.

Mr. Gulau said they did look into building the addition onto the front of the existing garage, but it would result in many other issues. If the shop area where in front, then he would lose his ability to drive thru and park his every-day, current vehicles. He said it kills him to see beautiful houses with garages and then cars parked outside all the time because the garages are filled with junk. He said his goal is to be able to keep his cars in his garage. He said he did get some quotes of what it would cost to build it with an addition onto the front, but it doesn't add anything to the aesthetics of the property. He said he also would like them to consider that his wife would like to add a sunroom onto the rear of the house over an existing patio, so building a garage addition to the front would really limit the spacing between the house and the garage. He commented from a financial standpoint, he is choosing to pursue this garage addition now so he can get some things out of storage units, which then frees up some monthly payments so he possibly could do a sunroom that his wife would like to have.

Ms. Grentzer asked if he would remove part of the rear wall of the existing garage to connect the addition. Mr. Gulau said yes. He said he has a wood shop, because his boats are wood and a mechanical shop, but it's all for personal use because he's now retired and has projects he'd like to work on now that he has the time.

Sandra Pick, 238 Margaret, Marblehead came forward and was sworn in. Ms. Pick stated she is the neighbor directly to the south and has no objections to the request, that it will not impact her one way or the other.

There were no further questions from the Board and there was no one else with standing who wished to testify.

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Mr. Fetzer made a motion to close the public comment segment of the hearing, seconded by Ms. Grentzer. All were in favor and the motion carried. Ms. Grentzer motioned to recess into executive session to deliberate the merits of the case. Mr. Fetzer seconded the motion and the roll call vote was as follows: Ms. Michael – yes; Mr. Fetzer – yes; Mrs. Grentzer – yes; Mrs. Roberts – yes. The motion carried and the Board recessed at 7:23pm.

Mr. Fetzer moved and Ms. Grentzer seconded the motion to reconvene. Ms. Michael – yes; Mr. Fetzer – yes; Mrs. Grentzer – yes; Mrs. Roberts – yes. The Board reconvened at 7:32pm.

The Chair asked Mrs. Dale to read the Findings of Fact for BZA Case #2019-040:

With regard to BZA-2019-040 being a request for an Area Variance to Section 5.1.1.A.ii. to allow for a 24' x 26' (624s.f.) addition onto an existing detached garage that will exceed the allowable size (1,200 cumulative s.f. allowed/ 1,488 s.f. proposed) for the property located at 250 Margaret:

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 a single-family residence and the restrictions would allow for 336s.f. of additional garage space.
2. The variance **is not** substantial because the owner has sufficient property to accommodate 288s.f. of additional accessory building space over the limitation and all other zoning requirements will be met.
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 all setbacks will be met and the addition will barely be visible from the road as it is in the corner of the property where there are no other buildings or homes next to this structure on the adjoining lots.
4. There is **no** indication the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because utilities are existing to the property.
5. The property owner states they **were not** aware of the size limitation and zoning in effect in the Township.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by placing the addition onto the front of the garage and attaching it to the house.
7. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance because there would be no impact to adjoining properties and all other requirements are met.

Ms. Michael 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 **does support** the applicants request for a variance.

Therefore, the Variance should be accordingly **APPROVED**. Motion Seconded by: Mr. Fetzer. Roll Call Vote was as follows: Ms. Michael – yes; Mr. Fetzer – yes; Mrs. Grentzer – yes; Mrs. Roberts – yes. Vote 4-0, the motion passed.

The Chair stated the case has been Approved. The appellants may pick up their permits in the days following the next meeting.

Signing of Decision Sheets

The Chair asked the Board if they had the opportunity to review the Decision Sheets presented for the following cases. There were no corrections or modifications. Mr. Fetzer made a motion for approval of the decision sheets as presented for the following cases. Ms. Michael seconded the motion. All were in favor and the motion carried.

- a. **BZA-2019-022 194 Strause Lane.** Request for a Conditional Use in accordance with Section 3.1.2.C.iii and Section 4.5 to allow for a Bed & Breakfast. Also a request for a Variance to Section 4.5.1 that the use must be owner-occupied. **Lynne Hamer, Owner/Applicant; Gregory Johnson/ Agent.**

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- b. **BZA-2019-025 6721 E. Harbor Road (Snug Harbor).** Request for a Conditional Use in accordance with Sec. 3.1.10.v. for a 12 unit Resort. Area Variances requested to Sec. 4.4.1. to encroach into the west, side-yard setback (45' required/ 10' proposed) and south, front-yard setback (55' required/25' proposed), Sec. 4.4.4. to allow a reduction in open space (1.10ac. required), Sec. 4.4.5 to allow the Resort designation on less than 5 acres (4.40ac. proposed) and Sec. 4.4.7. to reduce the separation requirement between units (20' required/10' proposed). **Safe Harbor Marina, Mark & Kenny Montgomery, Owner/Applicant.**

Approval of March 20, 2019 Board of Zoning Appeals Meeting Minutes

Ms. Grentzer made a motion to approve the March 20, 2019 meeting minutes, Mr. Fetzer seconded. All were in favor and the motion carried.

Old Business

There was none.

New Business

There was none.

Other Business

There was none.

Reports and Communications from Members and Staff

There was none.

Adjournment

Mr. Fetzer moved to adjourn the meeting and Ms. Grentzer seconded the motion. All in attendance were in favor and the motion carried.

The meeting was adjourned at 7:38p.m.

Kathryn A Dale

 RECORDING SECRETARY

Kenny Golub

Joseph R. Fetzer

Lucretia Grentzer

S. I. Milner

BOARD OF ZONING APPEALS