

RECORD OF PROCEEDINGS
Danbury Township Board of Zoning Appeals

Minutes of

Meeting

BEAR GRAPHICS 800-325-8094 FORM NO. 10148

Held

February 19, 20 20

The Danbury Township Board of Zoning Appeals was called to order at 6:30 p.m. by the Vice-Chair, Loretta Grentzer, at the Danbury Township Hall. The Pledge of Allegiance was recited.

The roll call showed the following members present: Vice-Chair, Loretta Grentzer, Ms. Sherry Roberts, and Mr. Clyde Shetler. Member Joseph Fetzer, Lisa Bauer and Alternate, Ms. Patty Zsigo were excused. Also present were Kathryn Dale, Zoning & Planning Administrator and new Alternate Member, Gregory Huffman. Visitors present were Mrs. Colette Maxwell-Twarek, Mr. Roy "Edward" and Diane Veley, Mr. Bradley and Mrs. Anna Miller, Ms. Lisa Leslie and Mr. Peter Corrado.

Ms. Dale swore-in new Alternate Member Gregory Huffman & Clyde Shetler as a Regular Member.

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 Vice-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 Vice-Chair swore-in the Zoning and Planning Administrator, Kathryn Dale.

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

Adjudication Hearing
Case BZA #2020-005
63 Erie Beach
Maxwell-Twarek

Request for an Area Variance from Section 5.1.C.ii to allow an accessory structure to be located in the rear-year setback (5' required/ 3'7" proposed).

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

The Vice-Chair asked the Zoning Administrator to give an overview of this application. Ms. Dale shared that the applicant, thru the company they are using, came to zoning to obtain a permit for a 12' x 28' shed on the north side of the property. That is when it was discovered that this 9' x 16' accessory structure had been constructed without proper permits and sits too close to the property line. Staff directed the homeowners that this issue needed to be resolved before moving forward with another new shed. That either included moving the 9' x 16' structure to meet the setback or applying for a variance.

According to the applicant's narrative statement, they have a large family and use this structure as an outdoor kitchen. The structure sits 43" or 3'7" from the property line instead of the required 5'. They are asking for a 1'5" encroachment into the setback. Behind this structure and their existing, nonconforming detached garage is stone rip-rap up to the side of the firehouse building.

Legal Counsel has advised this Board in the past, when rendering a decision on a case where something already exists, the Board should review it as though it doesn't exist. The decision standards remain the same, but the question the Board has to ask themselves is if you would approve this if they had followed proper procedures and come to the Board before they constructed the said structure. Ms. Dale concluded by reviewing the decision standards the Board would be considering. There were no further questions from the Board for Ms. Dale.

Colette Maxwell-Twarek, Owner/Applicant, came forward and was sworn in. Mrs. Maxwell-Twarek reviewed the paperwork and stated it was as she submitted. Ms. Maxwell-Twarek shared that they already had the outside patio area with two grills, a smoker and a fryer. With the weather around here, they wanted a roof over it and they didn't think there would be a problem with it since it sits further back than the garage that is already there. Ms. Grentzer asked if that was all she had to say. Ms. Maxwell-Twarek indicated it was. Ms. Grentzer asked if any of the Board Members had any questions for the applicant.

Ms. Roberts clarified that they are looking to approve a structure that is already built and grant a variance for it. Ms. Roberts asked if they are also being asked to approve the 12'x28' shed. Ms. Dale said no, a variance is not needed for the 12'x28' shed and since this issue came to light, they have put that project for a new shed on hold.

Ms. Grentzer said that in the applicant's narrative, they state they didn't question putting it up because it was just an outdoor grilling space, but then they went ahead and built this structure. Did you ever think about the fact that you might need a permit? Ms. Maxwell-Twarek said she did not. She said her husband and his friend built the structure and truthfully they did not think they would need a permit.

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Had we thought it needed a permit, we would have because we have gotten permits before for the small shed and pool on the property. She said this is just a roof with posts and they did not think it needed a permit.

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

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

Mr. Shetler motioned to recess into executive session to deliberate the merits of the case. Ms. Roberts seconded the motion and the roll call vote was as follows: Mr. Huffman – yes; Mr. Shetler – yes; Ms. Roberts – yes; Ms. Grentzer – yes. The motion carried and the Board recessed at 6:48p.m.

Ms. Roberts moved and Mr. Shetler seconded the motion to reconvene. The roll call vote was as follows: Mr. Huffman – yes; Mr. Shetler – yes; Ms. Roberts – yes; Ms. Grentzer – yes. The Board reconvened at 7:00p.m.

The Vice-Chair asked Mrs. Dale to read the Findings of Fact for BZA Case #2020-005:

With regard to BZA-2020-005 being a request for an Area Variance from Section 5.1.C.ii to allow an accessory structure to be located in the rear-yard setback (5' required/ 3'7" proposed) for the property located at 63 Erie Beach Road:

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 and the property has ample space for an accessory structure(s).
2. The request is **not** substantial because this structure aligns with the existing grandfathered structure and only encroaches by 1'5" still allowing ample space to maintain the rear of the structure.
3. The essential character of the neighborhood **would not** be substantially altered by the variance and adjoining properties **would not** suffer a substantial detriment as a result of the variance because the structure is already constructed.
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 and there is ample space for the electric company to come in and service the power lines if need-be.
5. The property owner states they **were not** aware the Township had a zoning restriction because they thought it was simply an outdoor grilling area.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by removing the structure or moving the structure forward (west).
7. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variance because of the location of this structure and what it is next to and what is behind it; there is no negative impact on allowing the structure to be 1'5" closer to the property line.

Ms. Roberts moved that the Board adopts and makes the findings of fact as read by the recording secretary and that after considering and weighing these factors, the Board finds that Decision Standards(s) (2) (3) (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. Huffman. Roll Call Vote was as follows: Mr. Huffman – yes; Mr. Shetler – yes; Ms. Roberts – yes; Ms. Grentzer – yes. Vote 4-0 the motion passed. The Vice-Chair stated that the applicant could receive permits following the BZA's next meeting in March.

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Adjudication Hearing
Case BZA #2020-006
240 Tibbels
Veley

Request for an Area Variance from Section 7.9.3.A to allow for an addition onto the nonconforming home to exceed 20% of the original square footage [291s.f. allowed/ 588s.f. all new (47%) or 1,260 w. garage attachment (86%) proposed].

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

The Vice-Chair asked the Zoning Administrator to give an overview of this application. Ms. Dale shared that the applicant is proposing to construct an 8' x 16' (128s.f.) bathroom addition and a 16' x 40' covered patio onto the rear of the home. 180s.f. of this covered patio porch is being replaced, so while the whole porch is 640s.f., 460s.f. of it is all new. The existing house is nonconforming because it does not meet the required front-yard setback of 20'. The existing nonconforming structure contains 1,455s.f. 20% would allow for a 291s.f. addition. 588s.f. is being proposed (47% increase). However, since the garage is now going to be attached via this proposed covered porch addition, the garage also has to be calculated in which becomes a 1,260s.f. addition or 86% increase. According to the definitions, anything that is roofed over, even though not enclosed counts as new floor area. All other requirements related to setbacks and lot coverage are satisfied. Ms. Dale concluded by reviewing the decision standards the Board would be considering. Ms. Roberts clarified that if they take the existing garage out of the equation, they are still looking at a 47% increase. Ms. Dale said that was correct. There were no further questions from the Board for Ms. Dale.

Edward Veley, Owner/Applicant, came forward and was sworn in. Mr. Veley reviewed the paperwork and stated it was as he submitted. Mr. Veley said they bought a 70 year old cottage and the finished floor elevation is pretty low. He said the structure on the back, if he's granted the variance, will help him control the water runoff because he has negative drainage from the west into the existing patio. Mr. Veley said if he can raise the elevation of the existing structure, because the existing structure - he's only 5'9" and there is zero head clearance. Mr. Veley said if he can raise the elevation of the roof structure, then he can raise the elevation of the back patio to divert the surface runoff around to the north side of the property where there is a catch basin. Mr. Veley said if he can control that, then he's in pretty good shape, if not, then he'll have an uphill battle to salvage the cottage. Along with that, aesthetically, he said they're trying to make it a nice place for family to come, future family and keep it around for another 70 years.

Ms. Grentzer said she did notice the negative slope when she visited the property. She asked why by raising the patio and subsequently the roof, it has to be connected to the existing garage. Mr. Veley said he guessed he wouldn't have too, but the finished floor garage elevation and driveway - if he comes out 6' - it pitches (drains) into the south side of the lawn and the existing walk drains right into it. He said he can change all that elevation, but if it is connected, then that whole 16' x 40' area becomes waterproof. He said he would then be able to work with that (roof) perimeter and drain everything to the north. The storm sewer is to the west, so he would be able to tie all the downspouts into it and control the surface runoff. He said no one knows what the elevation is of the storm sewer in context to the finished floor elevation, so he's not real sure that would work. He said that if he can connect them all, then the whole 16'x40' area is controlled. Ms. Grentzer asked if he could control all this drainage without having a roof over the patio, especially without the connection to the garage, which would then eliminate half of what he needs in variances. Ms. Roberts said that yes, but 672 of the square footage is already there, and they're having to include it because the applicant is proposing to connect it, but it's really a misnomer because the garage is there. Mr. Veley said yes, he agrees, it's a bit fictitious because it inflates the numbers but it's not really all new proposed. Ms. Roberts said it's the 47% that they really need to consider.

Mr. Veley said the 16'x40' addition is the addition they plan to move ahead with first and they included the 8'x16' squaring up of the cottage so they don't have to come back in the future if they decide to do that addition. Mr. Veley commented that there is one bathroom in the house and if their family grows, they may need to think about adding a second bathroom in this area, but it's not in their immediate plans complete the 8'x16' addition. Mr. Shetler clarified and said that looking at the aerial photo, this 8' x 16' area is not currently under roof. Mr. Veley said that is correct. He also said the aerial photo might be a little deceiving because the prior owners had a dog kennel located in this same area and it was covered over by a tarp, but that was removed when the sellers left.

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

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

Mr. Shetler motioned to recess into executive session to deliberate the merits of the case. Ms. Roberts seconded the motion and the roll call vote was as follows: Mr. Huffman – yes; Mr. Shetler – yes; Ms. Roberts – yes; Ms. Grentzer – yes. The motion carried and the Board recessed at 7:17 p.m.

Ms. Roberts moved and Mr. Huffman seconded the motion to reconvene. The roll call vote was as follows: Mr. Huffman – yes; Mr. Shetler – yes; Ms. Roberts – yes; Ms. Grentzer – yes. The Board reconvened at 7:33 p.m.

The Vice-Chair asked Mrs. Dale to read the Findings of Fact for BZA Case #2020-006:

With regard to BZA-2020-006 being a request for an Area Variance from Section 7.9.3.A to allow for an addition onto the nonconforming home to exceed 20% of the original square footage [291s.f. allowed/ 588s.f. all new (47%) or 1,260 w/ garage attachment (86%) proposed] for the property located at 240 Tibbels:

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 some sort of addition is permitted.
2. The request is substantial because it's nearly 4 times more than what is allowed, however 40% is due to a pre-existing garage.
3. The essential character of the neighborhood would not be substantially altered by the variance and adjoining properties would not suffer a substantial detriment as a result of the variance because the applicant is proposing the addition primarily to the rear of the home that backs up to a marina storage building and a neighboring garage.
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 stated they were not aware the Township had a restriction related to the size of an addition or that their house was nonconforming.
6. The property owner's predicament can feasibly be obviated through some method other than a variance by either removing or scaling down the additions or by not connecting the patio porch covering to the garage.
7. The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance because when taking into consideration the placement of the addition on the property, the proposed building is not out of character nor would it infringe on adjoining property owners health or safety.

Mr. Shetler 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 does support 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. Huffman – yes; Mr. Shetler – yes; Ms. Roberts – yes; Ms. Grentzer – yes. Vote 4-0 the motion passed. The Vice-Chair stated that the applicant could receive any necessary permits following the BZA's next meeting in March.

Adjudication Hearing
Case BZA #2020-009
7487 E. Harbor Road
Rock Harbor Cottages
Miller

Request for a Conditional Use in accordance with Section 3.1.10.C.v & 4.4 to designate an additional parcel (PIN# 0141175415717000) & the property as a Resort. Area Variances requested from Sec. 4.4.1. for side-yard setbacks on the additional lot (45' required/ 5' proposed), and Sec. 4.4.5. to allow less than minimum acreage requirement (5 ac. required/ 2.8 total ac. proposed).

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

The Vice-Chair asked the Zoning Administrator to give an overview of this application. Ms. Dale shared the property for Rock Harbor Cottages consists of two parcels (PIN# 0141175015713000 & 0141175815720000), but the owners also have possession of a third parcel (PIN# 0141175415717000). All parcels have been in the family for generations and is all zoned "R-C" Recreational Commercial.

According to Township zoning records, the two larger parcels known as Rock Harbor Cottages, is considered to be a nonconforming Resort. The use was grandfathered and allowed to remain or continue operation as it was when the current owners purchased the property in 2013. At the time they received possession of the property, there were 3 cottages and 2 mobile home units (5 units total) that were rented out for periods of less than 30 days (daily/weekly), which was & is allowed with any Resort. One cottage and the two mobile home units have been demolished or removed from the property while under the current owners and subsequently replaced with RV campers. This too was allowed because according to the Resort definition, lodging accommodations can be offered through "cabins, cottages, recreational vehicles, tents and the like".

On April 19, 2019, the owner received Permit #2019-057 on the third parcel to change the use of an existing Boathouse/ Storage Building to a Single-Family dwelling and construct a small 7' x 9' bathroom addition onto the rear of the structure. Since the structure sat on a parcel of its own, the use of the structure could be converted to a permitted use. A Single-Family dwelling is a permitted use in the "R-C" Recreational Commercial zoning district. The structure was nonconforming/ grandfathered as far as placement in relation to the side property line, but the addition met the zoning requirements and 20% limitation (See Section 7.3.A). This structure was not being rented out at the time the owners received possession of the property; even if it had been at one time during the history of the family's ownership, rental or occupancy of this structure had discontinued for a period of more than two years, thus was no longer protected as a nonconforming use (See Section 7.9.4.A).

In January 2020, it came to Staff's attention that the "Boathouse" dwelling was advertised in many online media forms as available for overnight rental for periods of less than thirty (30) days, which is prohibited according to the zoning regulations.

Per Section 7.9.3.E "*A nonconforming use of land shall not be expanded or extended onto any other portion of the lot or an adjoining property*". Section 7.9.1.A states that "*It is not the intention herein to classify as nonconforming, a use allowed in a district as a conditional use under the regulations of this Resolution*". However, the zoning resolution goes on to say in Section 7.9.4 that "*A nonconforming use may be changed to any use that is a permitted use in the zoning district in which it is located, or approved Conditional Use...*".

When we put these sections altogether, what it means is that the third parcel with the "Boathouse" structure on it, while the owners may have always viewed it as part of Rock Harbor Cottages, it wasn't recognized the same by zoning, so the Resort designation on the two parcels cannot just automatically be expanded onto another parcel, allowing the unit on the third parcel to be rented. Due to Section 7.9.1.A, while the two Resort parcels have nonconformities (buildings encroaching into setbacks, less than 5 acres) and do not meet all of the Conditional Use standards, they technically are allowed to continue as they are, without variances because a Resort is a Conditional Use in the "R-C" Recreational Commercial zoning district.

The primary focus of the Board's decision with this hearing is whether or not to allow the expansion of the Resort onto the third parcel that contains the "Boathouse" structure. In order to do so according to Section 7.9.4, a Conditional Use has to be approved. The applicant is asking that all three parcels be recognized as one functioning Resort. In order to make a Resort designation on the third parcel viable, variances need to be granted for side-yard setbacks and overall Resort size. Even with the addition of this third parcel, the property as a whole is under the 5 acre minimum requirement, thus a variance is needed to allow for it to be undersized at 2.8 acres. The third parcel is only 44.25' wide; the ability to meet a 45' side-yard setback from each side property line is impossible. The applicant is proposing that 5' be the required setback on this specific parcel, which aligns with the side-setback requirement for the other properties next to this parcel.

Based on the current requirements, up to 14 units is the maximum that would be allowed to be on this property. If this owner or future owners decide to expand beyond the 6 units currently on the three parcels, they would have to come back before this Board for approval of more units. It is likely that other variances would be needed with any future expansion request, specifically to reduce the open space requirement because the property right now as it sits, just meets the 25% open space requirement.

Ms. Dale concluded by reviewing the applicable zoning code sections of 4.4 Resort and the decision standards the Board would be considering.

Ms. Roberts asked if Ms. Dale could clarify because she feels like they are asking for two different things. She asked if by asking for a 5' setback it makes the property residential. Ms. Dale said that it

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would not make the property residential, but they are asking for side-yard setbacks on the 3rd parcel only to be equivalent to the setbacks as the residential properties next to this parcel follow. Ms. Roberts said okay, yet they want to make it part of the resort so they can rent it daily. Ms. Dale said that was correct. Ms. Roberts said they want their cake and to eat it too. Ms. Dale said that if the Board agrees that the 3rd parcel can be part of the resort designation, there is physically no way for the 3rd parcel to meet the 45' side setback requirements – they have to have a side setback; essentially this Board has to determine if the 5' proposed is appropriate. The applicant's came up with the 5' as the proposal because that's what all the other properties back at the end of this lane also follow.

Mr. Shelter said that the 3rd parcel does not adjoin with the other two parcels except for the common driveway. Ms. Dale said that was correct – to a degree. She stated that arguably the street is in this applicants name and is private, so arguably all the property in question is adjoining. She said legally, some of that would have to be looked at closer to see if there are additional easements or language about the driveway/lane. She said it's platted like a street, but not a dedicated street in a traditional subdivision street right-of-way sense since it comes up under a parcel identification number with the other two original lots. There were no further questions from the Board for Ms. Dale.

Bradley Miller, Owner/Applicant, came forward and was sworn in. Mr. Miller reviewed the paperwork and stated it was as he submitted. Mr. Miller said he has a passion for this matter, but will try to keep it short. He said he's not asking to build condos or anything like that or anything that's not already there. He stated they are asking the Board to allow them to continue to use their property in the way that they have always considered Rock Harbor Cottages to be. He shared that his wife's family bought all three parcels, together, in 1947. He directed to Boards attention his attachment (Attachment B & C) that shows the parcels were all in the same family's name, which was his wife's grandparents and aunt & uncle. In the 1960's they started renting out the cottages and offering charters from the dock. The dock parcel was always offered to the guests as part of a Rock Harbor Cottages amenity. They were able to use the boat ramp on the property and the docks; it was part of their rental. They never offered rentals from the boathouse piece of property up until the last year. Mr. Miller stated he went through the Building Department and Zoning and this is actually the smallest livable structure in all of Ottawa County. Mr. Miller said that when they built it (rehabbed it) they did not do so with the intention of using it as a single-family residence. He said he had always intended for it to be used as a rental to coincide with what they are doing with the rest of the property. He said there are no closets or room for dressers in this structure because its 300s.f. including the bathroom that they added on. Mr. Miller said it's basically an efficiency unit with a nice bed, jacuzzi tub and a small kitchenette. Mr. Miller said he put a lot of money and time into it and had he known he could not rent it out on a daily basis, he never would have done it. He said he would have come before this Board prior to ask for permission and it was not something he was trying to do back-handed. He shared that he had met with Ms. Dale quite a few times before regarding this property and he didn't make his intentions clear apparently or he just didn't understand what he could or couldn't do with the property.

Mr. Miller began in summary to state that they are coming before the Board to ask them to allow them to use this third parcel as part of the Resort, which would allow daily rentals in the building by the water and is how they use the rest of the property already. He stated it's zoned properly, they aren't asking for a different zoning classification, and it falls within the Land Use Plan's direction. He said the Recreational-Marine description describes exactly how they are currently using the property. He said they do offer fishing charters and nightly rentals to tourist. In regards to the setbacks, Mr. Miller said they are asking, since the third parcel is only 44' wide, the 45' side-yard setback requirement from both side yards just isn't going to work. He said if he does decide he wants to add a deck at some point or a small accessory shed, he just needs to know if he can or cannot do that, so he would like the side setback requirement to be defined while he's here before this Board. Mr. Miller concluded by saying that was about all he had to add.

The Vice-Chair asked if there were any questions from the Board. Ms. Roberts asked if they had only began to rent out this additional unit on the third parcel this year. Mr. Miller said yes, over the winter. He explained that if his memory served him right, they received the occupancy permit in October 2019 and they had a few small things to do to the unit and started renting it around Halloween or just after. He said they had had a few rentals in there then received their Cease & Desist letter from the zoning inspector (January 2020). Mr. Miller said he came to Ms. Dale's office as soon as he received the letter and that's when he learned what he was doing was wrong, so he's here now before the Board to try and get that corrected. Ms. Grentzer asked if he's been renting this unit on a daily basis. Mr. Miller said yes. Ms. Grentzer asked if this has been done successfully. Mr. Miller said yes, to a degree, the lack of ice fishing is killing him.

Lisa Leslie, 7477 E. Harbor Road, Marblehead, came forward and was sworn-in. Ms. Leslie said she owns 7477, 7453 & 7455 E. Harbor Road. She stated there are two parcels of Mr. Miller's land that touched her backyard. She said their properties are separated by a fence. She said when she bought her property, she knew Mr. Miller's property needed 5 acres to be able to build anything. She said she

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factored in when she bought her property that he would need her property to get to that 5 acre size requirement. Ms. Leslie stated that Mr. Miller has never approached her to purchase her land to help make it a resort. She said she had heard when they were selling the cottages; her husband approached Mr. Miller to see if they could buy one because her father was interested in living closer, but that offer was denied. Ms. Leslie said that after the cottages sold, they received property damage. She said they had to replace a section of chainlink fencing from beds being delivered and a box truck tried backing down the driveway and ran into her fence. She said it was actually a hit & run, but since she has cameras she was able to identify the company with the police. I'm here to ask that it not get designated as a resort, or allow the daily rentals since it doesn't meet the requirements or if Mr. Miller would want to buy her property to meet the requirements. She stated she lives here year-round and she has the single-family home that she lives in. The other properties she has are also year-rounder's. Ms. Leslie said there are noise issues and this will allow more noise, more traffic and she's just here to ask that the third lot not get added as part of the resort.

Mr. Huffman asked if Ms. Leslie had copies of the repairs made to the fence or the police reports. Ms. Leslie said no, but she could provide that another day if they would like it. Ms. Roberts asked if Ms. Leslie is looking to sell her property to Mr. Miller. Ms. Leslie said she would love to sell it. Ms. Roberts asked Ms. Leslie if she's ever approached Mr. Miller about that. Ms. Leslie said no. She said they don't really talk even though Mr. Miller has been to her place and helped one time with something. She said she didn't even realize they were renting back there until the fence happened because the person who was having the beds delivered came and met with her. Ms. Roberts asked if the fence got fixed. Ms. Leslie said yes, that the delivery company fixed it. Ms. Leslie had nothing more to say.

The Vice-Chair asked the applicant if he would like to rebut any comments made. Mr. Miller said that he does not think the delivery truck issue was related to Rock Harbor Cottages because there are other houses also at the north end of the lane and he doesn't recall ever having a discussion with the Leslie's about that. Ms. Leslie spoke out that she did not know who it involved for sure. Ms. Grentzer asked Mr. Miller if they talk at all. Mr. Miller said not really, but that's not to say that they aren't friendly, he said he did help her husband one time with a backhoe to help remove some old steps, but they just don't see each other or have any reason to really talk.

Mr. Miller said as far as noise is concerned, he said they have had some issues with some occupants, but for the most part they do not. He said the biggest issue is they are right in between Marine City and Harbor Bay Winds with probably close to 500 people that come into those places on the weekends. He said the unit they are asking to have included is going to be more than 500-600 feet away from the Leslie's residence. Ms. Roberts asked if it interests Mr. Miller at all in Ms. Leslie's land. Mr. Miller said maybe someday, but not at this time, financially.

Ms. Dale said the Leslie property is not the issue at this time, she said the focus is the third parcel and if the Resort designation gets expanded to that specific parcel. Ms. Dale refocused that part of the Miller property is already a grandfathered, code-approved Conditional Use and designated as a Resort. Mr. Miller agreed, that this property has is some way operated as been in their family since the late 40's and operated as a resort since the 60's. He said weather the Board approves the third parcel to include in the daily rental or not, it's still very much a part of the resort due to the boat ramp and docks.

Mr. Shetler said he had two questions. His first question was for Ms. Leslie and that she is the property that fronts along E. Harbor Road. Ms. Leslie said yes. Mr. Shetler asked Mr. Miller if the third parcel is the only access he has to the docks. Mr. Miller said yes. Mr. Miller said that the only other thing he'd like to add is that between the resort cottages and the Leslie property is a pretty large green, open space with mature trees. He said that space helps filter the traffic noise from SR 163 back to the cottages.

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

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

Ms. Roberts motioned to recess into executive session to deliberate the merits of the case. Mr. Shetler seconded the motion and the roll call vote was as follows: Mr. Huffman – yes; Mr. Shetler – yes; Ms. Roberts – yes; Ms. Grentzer – yes. The motion carried and the Board recessed at 8:00 p.m.

Ms. Roberts moved and Mr. Shetler seconded the motion to reconvene to ask the applicant additional questions for their deliberations. The roll call vote was as follows: Mr. Huffman – yes; Mr. Shetler – yes; Ms. Roberts – yes; Ms. Grentzer – yes. The Board reconvened at 8:17 p.m.

The Vice-Chair asked the applicant to come forward to the podium. Ms. Roberts said she has a question. She said it was about a year ago Mr. Miller got a permit to change the Boathouse structure to a residence. Why? Mr. Miller said to rent it out with the resort on a daily basis just like the other cottages. Mr. Miller said that that's where he was confused – he then said let's put it this way, I wasn't even confused, I was just ignorant to the rental laws. Mr. Miller said he had no idea he couldn't do that.

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He said if he had, he never would have put \$60,000 into the 300s.f. structure. He said the whole 'basement' to the structure had to be filled with concrete because it was filled with water. The lake levels are so high from when the building was built in the late 1930's. Ms. Roberts asked Mr. Miller's wife if she was willing to testify. She said yes.

Mrs. Anne Miller, Owner/ Applicant came forward and was sworn-in. Ms. Roberts said her question for Mrs. Miller; this property has been in her family for years. Mrs. Miller said yes. Ms. Roberts said, as she was going up it was her grandfather's property. Mrs. Miller said right, her dad's father bought the property when her dad was like 10 yrs. old. Ms. Roberts asked her if she worked on the property as she was a kid growing up. Mrs. Miller said yes, that she helped her grandmother clean the cottages because those were rented, not the Boathouse. Ms. Roberts reminded her that she's under oath, and went on to ask her if she knew daily rentals could not be done in the shed/boathouse. Mrs. Miller said no, she had no idea. Ms. Grentzer said when they asked for a permit to make that into an individual home, you did not know you could not do daily rentals? Mr. Miller said no. Ms. Grentzer asked how long they've lived in this area. Mr. Miller said they've had the property since 2013. Mr. Miller said he always thought the Boathouse parcel was part of the resort and that's where the confusion came in. Ms. Grentzer asked how it can be a part of a resort if it's a private home? Mr. Miller said that's where he was confused. He said again he never would have put so much money into the building there and they likely would have torn it down and replaced it with something different. He said he's kind of stuck where he's at now. Mr. Miller said that he has attempted to rent it out to longer-term renters, but there is no space for a dresser and there are no closets. We literally have fruit crates mounted on the walls for storage of towels and things. Ms. Miller said there are some containers under the bed also for storage. Ms. Grentzer asked if there is a shower or tub in the unit. Mr. Miller said yes.

Ms. Grentzer asked why they thought about making it into a private residence? Mr. Miller said that was never the intention. He said they assumed since they had the other rentals that this could be used the same way. Ms. Roberts asked why he came to get a permit for a single-family residence then if he thought it was part of the resort. Mr. Miller said the structure wasn't a livable structure, so before he put money into it, he wanted to make sure that it could become a livable structure. He said he did come to Ms. Dale and asked if it could become a house, and Ms. Dale said yes. He said they added a 7' x 9' bathroom addition onto it, then went to the building department, had a special inspection that told him he had to have a hot plate and some other things to make it into a livable structure and then got the building permit. Ms. Roberts asked if he ever made his intentions know with the building official. Mr. Miller said he did, but he doesn't enforce or know the zoning requirements. Ms. Roberts asked Ms. Dale why she gave Mr. Miller a permit for the residence. Ms. Dale said because this was a lot of its own, zoning didn't recognize it as being a part of the resort and every lot is allowed to have a single-family residence on it. Ms. Roberts asked if Ms. Dale ever asked him what his intentions were. Mr. Miller said he didn't think so cause he would have told her. Ms. Grentzer said he wasn't planning on maintaining it for himself and asked if he made that clear to Ms. Dale. He said he was not going to maintain it for himself. Ms. Grentzer asked if he made it clear to Ms. Dale that he was going to rent it out. Mr. Miller said he's not sure he was clear about that.

Ms. Roberts said she's going to be honest, she's trying to find a way to give this to him because she really doesn't want to. She said to her personally, if he had come to this Board before renting it and made it legal to begin with, because renting it illegally really makes her angry – but if he had come to them before, she probably would have said yes. Ms. Roberts said she's having a really hard time getting past all that in order to say yes now. Ms. Roberts concluded by saying she's just struggling with what the right answer is. Mr. Miller said again if he'd known, they never would have rented it. Ms. Roberts said she's struggling with the fact that Mrs. Miller grew up on this property and *lived it*. It's not like you just bought it and now all of a sudden have this property you didn't know what to do with. How did you not know? Mr. Miller repeated that they thought it was all part of the resort. Ms. Roberts said not when they're coming to the Zoning Inspector asking for a permit to turn it into a residential property. Ms. Roberts said she's just trying to be as honest as possible with them on what she's struggling with, and she probably shouldn't have asked to come back out to ask questions and the Board should have just come out and given a yes or no, but she doesn't understand how Mrs. Miller grew up here and didn't know the rules.

Mrs. Miller said growing up on the property they always considered all three parcels to be "Rock Harbor Cottages" and "Reef Bobber Charters". She said her father ran charters from the property and they fished off the docks. Mrs. Miller said it was never described to her growing up or even as an adult that it was separate parcels and we would be limited with the area at the water.

There were no further questions from the Board for the applicant.

Ms. Roberts made a motion to close the hearing again, seconded by Mr. Huffman. All were in favor and the motion carried. Ms. Roberts motioned to recess into executive session to deliberate the merits of the case. Mr. Shetler seconded the motion and the roll call vote was as follows: Mr. Huffman – yes;

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Mr. Shetler – yes; Ms. Roberts – yes; Ms. Grentzer – yes. The motion carried and the Board recessed at 8:27 p.m.

Mr. Huffman moved and Ms. Roberts seconded the motion to reconvene. The roll call vote was as follows: Mr. Huffman – yes; Mr. Shetler – yes; Ms. Roberts – yes; Ms. Grentzer – yes. The Board reconvened at 8:57 p.m.

The Vice-Chair asked Mrs. Dale to read the Findings of Fact for BZA Case #2020-009:

With regard to Case #BZA-2020-009, a request for a Conditional Use in accordance with Section 3.1.10.C.v & 4.4 to designate an additional parcel (PIN# 0141175415717000) & the property as a Resort. Area Variances requested from Sec. 4.4.1. for side-yard setbacks on the additional lot (45' required/ 5' proposed), and Sec. 4.4.5. to allow less than minimum acreage requirement (5 ac. required/ 2.8 total ac. proposed) for the property located at 7487 E. Harbor Road.

1. The Conditional Use **will** be harmonious with and in accordance with the **specific** objectives of the Danbury Township land use plan because the plan calls for this area to be "Recreational & Marine" which is defined as "*Developments that cater to recreation, camping, water recreation and tourism within the Township. Typified with campgrounds, boating activities, fishing and marine services*".
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 property will continue to operate as it has for many generations as a resort.
3. The Conditional Use **will not** be hazardous or disturbing to existing or future neighboring uses because all structures on the property are existing and the property will continue to operate as it has for many generations.
4. The Conditional Use **will not** be detrimental to property in the immediate vicinity or to the community as a whole for the same reasons as stated above in #2 & #3.
5. The Conditional Use **will** be served adequately by essential public facility and services because public utilities are currently available to the property and would remain unchanged.
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 an existing vehicular approach adequate to service the site and will not cause any interference with the traffic flow from SR 163.
7. The property in question **will** yield a reasonable return or **can** be used beneficially without the variance because for the most part, it is protected as a nonconforming, code-approved conditional use. The third parcel can continue to be used as a single-family home and rented out monthly or commercially with the Charter business operating from it.
8. The variance **is not** substantial because there is no additional land surrounding these parcels that would allow for them to acquire additional land and the variances are being requested to address existing condition issues.
9. The essential character of the neighborhood **would not** be substantially altered by the variance and adjoining properties **would not** suffer a substantial detriment as a result of the variance because the property will continue to operate as it has for many generations.
10. The variance **would not** adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because the property is currently serviced.
11. The property owner knows zoning is in place in the Township, but stated they misunderstood what was allowed to occur on the third parcel.
12. The property owner's predicament **cannot** feasibly be obviated through some method other than a variance in regards to size of the property because there is no additional land available surrounding this property to be able to obtain the necessary 5 acres and the third parcel is too narrow to meet the required side-yard setbacks for a Resort.
13. The spirit and intent behind the zoning requirement **would** be observed and substantial justice done by granting the variances.

Mr. Shetler 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

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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 Standard(s) (1) (4) (8) (12) 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 request for Area Variances is **not** contrary to the public interest, is harmonious to the existing uses and the spirit of the zoning resolution **would** be observed; and
- c. There is a preponderance of reliable, probative and substantial testimony and evidence that **supports** the applicants request for the Conditional Use and Area Variance;

Therefore, the requests should be accordingly **APPROVED**.

Motion Seconded by Ms. Grentzer. Roll Call Vote was as follows: Mr. Huffman – no; Mr. Shetler – yes; Ms. Roberts – yes; Ms. Grentzer – yes. Vote 4-0 the motion passed. The Vice-Chair stated that the applicant could receive any necessary permits following the BZA's next meeting in March.

Approval of December 18, 2019 Board of Zoning Appeals Meeting Minutes

Ms. Roberts made a motion to approve the December 18, 2019 meeting minutes, Mr. Shetler seconded. All were in favor and the motion carried.

Signing of Decision Sheets

There was none.

Old Business

There was none.

New Business

The Chair welcomed Mr. Huffman as a new alternate member.

Other Business

Distribution of new Zoning Resolutions. Ms. Grentzer had a few follow-up questions on where to find some information in the new zoning code format.

Reports and Communications from Members and Staff

There were none.

Adjournment

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

The meeting was adjourned at 9:12p.m.

RECORDING SECRETARY

Sherry Roberts

Loretta Grentzer

Clyde Shetler

BOARD OF ZONING APPEALS