

**APPROVED**

**MELROSE TOWNSHIP  
ZONING BOARD OF APPEALS MINUTES  
January 23, 2014**

**I. Call to Order:** The meeting was called to order at 7:00 PM by Chair Errol Lee

Roll Call: Errol Lee, Phyllis Cotanche, Todd Reeves, David Beier, Bart Wangeman.

Also in attendance: Zoning Administrator Randy Frykberg and Acting Recording Secretary Tom Mackie

**II. Approval of Agenda:** David moved to approve the agenda as amended to add 'Discussion of Policies and Procedures' under agenda item VI. Todd seconded. All ayes.

**III. Election of Officers:** Errol turned the meeting over to Randy Frykberg who explained the process for election of officers.

Randy indicated he would ask three times for nominations for Chairperson. Bart nominated Errol Lee with a second from David. Following two more calls for nominations, and none being offered, Randy called for a roll call vote and **Errol Lee was elected as Chair with a vote of all ayes.** Randy then turned the meeting back over to Errol.

Errol asked for nominations for Vice-Chair and Todd nominated David Beier. Following two more calls for nominations, and none being offered, Errol called for a roll call vote and **David Beier was elected as Vice-Chair with a vote of all ayes.**

Errol asked for nominations for Secretary and Bart nominated Todd Reeves. Following two more calls for nominations, and none being offered, Errol called for a roll call vote and **Todd Reeves was elected as Secretary with a vote of all ayes.**

**IV. Approval of Minutes:** Todd Reeves motioned, David Beier seconded, to approve the August 28, 2013 meeting minutes as presented. All Ayes, motion carried.

**V. Scheduled Public Hearings:** Case # ZBA 1-14, request by Walloon Lake Holdings, LLC for height and side-yard variances to build a Lodge at the SW corner of M-75 and Winsor Street (Property ID # 15-010-009-095-00).

Errol described the application requesting a 10 foot height variance and 15 foot side-yard variance from the Winsor Street right-of-way. He then read the following general facts:

1. The property is in the C-3 Village Commercial District and the Walloon Lake Shoreline Protection Overlay District.
2. C-3 Setback and size requirements are 50' from the water, 25' front (M-75), 25' from Winsor, 10' side, 66' width and 6,600 square foot minimum area. All setbacks will be met or exceeded, except that a small portion of the building would be 10' from the Winsor St. Right-of-Way, and 24' from the centerline of the street.

3. The peak of the proposed structure would be 45' tall. The requirement is for a maximum height of 35', as measured from the average finish grade to the peak of the roof. Several buildings in the Township are over 35' in height (such as the Church across from the Township Hall and the indoor tennis court on S. Shore Drive.
4. The adjacent four story condominiums on the lake to the south were approved at 43' tall as part of a PUD plan approval and modification.
5. Height regulations were established based on fire-fighting capabilities prior to the availability of aerial trucks in this area.
6. A new parking lot is proposed for 47 spaces just to the north of the existing lot across the street.
7. Valet parking is proposed.
8. Extensive landscaping is proposed around the Inn and along the waterfront, including cedar tree screening adjacent to the encroachment into the side yard facing Winsor St.
9. The proposal is to remove the existing 50' X 25' 2-story garage, the 75' X 60' 2-story duplex, along with the existing on-site pavement in order to build and landscape one 160' X 60' three story 36-room Lodge.

Randy noted this hearing was properly published and 300' notices sent to appropriate property owners. He also referenced Section 6.6 paragraph D1 of the Zoning Ordinance allowing a front yard setback in the C-3 district to be the average of buildings on adjacent lots. He also noted the appropriate setback on Winsor Street is 25 feet, unless lots across the street can be interpreted as adjacent.

David asked if height variances were granted on certain other structures in the Township and Randy responded he was uncertain about the Church as it happened some time ago, while the village condos were approved as a PUD that didn't require ZBA action, and the tennis courts on South Shore meet the requirement for average height even though one side exceeds the maximum.

Errol opened the Public Hearing at 7:20 PM, describing the process to be followed and inviting the applicant to speak first. Mr. Jonathon Borisch noted the purpose of tonight's hearing is to address the two variance requests and not whether a hotel is appropriate for this site.

David expressed concern that ownership of the designated parking across M-75 could change in the future, and asked if the parking lot could be legally tied to the lodge property. Jonathon suggested this will be considered at the Planning Commission meeting next Monday. Randy added a development plan in the C-3 district requires a site-plan review and the parking lot will be encumbered to the lodge property if the project is approved. Todd asked how the parking requirement is calculated. Randy responded this type of use is typically based on the number of rooms, but our Zoning Ordinance only considers square footage. Bart noted the Zoning Ordinance gives the ZBA authority to alter parking requirements.

Errol asked for public comment in support of the application. Bill Hutchinson stated he is in favor as it is consistent with historic uses in the area and a lodge would be a wonderful addition to the community.

Errol then asked for public comment opposed to the application. Jed Bloch suggested the boat launch adjacent to the site could be in conflict. Randy noted vehicle entrance to the lodge is from M-75, while Winsor Street would only be used as an exit. Jed indicated his concern is with congestion and not the proposed use.

Errol noted the purpose of this hearing is to consider dimensional variances only and any other concerns are more appropriately addressed to the Planning Commission. David suggested any expressed concern for safety on Winsor Street are related to the setback variance request.

Colleen Pachuta expressed her opposition to the height variance, noting the lodge would be much taller than the residential cottages across Winsor Street and would , therefore, be out of scale. She also suggested the structure would be too close to Winsor Street.

Cheryl Burkhardt expressed opposition and questioned the phrase "improved public corridor" included in the application. Jonathon explained his intention is to maintain a view of the lake between the restaurant and lodge. Cheryl suggested the project's impact on the boat launch site is more important than a view corridor.

Errol asked for any additional comment in opposition. With none offered he then asked for any other comment. Bob Diepeveen asked to have the Township Fire Chief's letter to the ZBA read. Errol read the letter and Randy noted the condominiums to the south do not have a fire suppression sprinkler system or have to comply with flood plain regulations, while the proposed lodge will. David read emails from Charley Zimmer, Jay Heydenberg, and Steve Byrnes all expressing concern with the application.

Mary Erb expressed concern with only a 10 foot setback on Winsor Street when increased traffic can be expected.

Lyon Stevens asked how much of the extra height is due to flood plain regulations. Errol responded the structure will be two feet higher to meet regulations.

Cheryl Burkhardt expressed concern for storm-water runoff on Winsor Street if the land is built up to address flood plain concerns.

Bob Diepeveen suggested the side-yard variance is only necessary because of the structure's bump-out in the northwest corner and this feature will affect the lake view. Additionally, Bob expressed concern for water drainage since the area frequently floods.

With no additional public comment offered, Errol closed the public hearing at 8:18 PM and asked if the applicant wished to address any of the stated concerns. Jonathon noted the property is in a commercial zoning district and believes adjacent property values will increase as a result of building a Lodge. He also indicated 4 or 5 other ideas had been considered for the property, but a lodge seemed to be the most appropriate.

## **ZBA Deliberation:**

Todd asked if the structure could be moved to the south to eliminate or reduce encroachment on the Winsor Street setback. Jonathon responded the existing infrastructure for the marina/restaurant prevents this. Errol asked if the bump-out area in the northwest corner is essential, noting the ZBA is required to pursue all opportunities to minimize or eliminate variances. Jonathon stated removing this feature would reduce but not eliminate the variance request.

Todd asked if this problem can therefore be considered self-created. Following discussion the consensus was the proposal provides better aesthetics than moving existing infrastructure to the park area south of the marina/restaurant.

David suggested we haven't granted a height variance in at least 25 years and are now considering one for aesthetic reasons, since a flat roof would eliminate the need for a height variance. He stated the proposed use seems appropriate but believes it can be constructed without variances. For the side-yard variance David indicated Winsor Street is already narrow and believes this variance may be ill-advised.

Phyllis suggested the proposed lodge will not encroach any more on Winsor Street than the existing split-rail fence and several tall structures have existed in the village at one time or another.

Bart suggested the height variance is not strictly for aesthetic reasons, noting a larger footprint could have been utilized to obtain the necessary square footage with less desirable results. Additionally, moving the existing infrastructure to the south of the marina/restaurant to allow the lodge to be moved south would have been a less desirable solution.

Errol expressed agreement with Bart, suggesting the adverse affect of building without variances would be worse.

## **Findings of Fact**

The following proposed findings of fact were reviewed, discussed, and unanimously agreed to:

1. The property, identified by tax code 15-010-009-095-00, is in the C-3 Village Commercial and the Walloon Lake Shoreline Protection Overlay District.
2. Setback requirements for this parcel are 50' from the water, 25' from M-75 and Winsor Street, and 10' side.
3. Height regulations are a maximum of 35' from the average finish grade to the peak of the roof.
4. The proposal is to remove the existing 50' x 25' 2-story garage, 75' x 60' 2-story duplex, and the pavement in order to build and landscape a 160' x 60' 3-story, 36 room Lodge that would have a height of 45' to the peak and a portion of the structure would be 10' from the property line on the Winsor Street side.

**Section 12.4 C Variance Criteria**

"The Zoning Board of Appeals shall have the power to authorize, upon appeal, specific variances from dimensional requirements. It shall be found by the Zoning Board of Appeals that any variance granted:"

- a. **Will not be contrary to the public interest or to the spirit and intent of this Ordinance.** The proposed new structure seems to fit the purpose of the C-3 zone. The height is similar to other structures in the area. The extra height does not seem to compromise fire safety. The portion of the new building in the Winsor Street side yard setback would still be further back from the road right-of-way than the three structures across the street. Therefore, the Board finds that the proposed project will not be contrary to the spirit and intent of the Ordinance. **Errol, Bart, and Phyllis agreed. Todd and David disagreed.**
  
- b. **Shall not permit the establishment within the Zoning District of any use that is not permitted by right within the district.** Inns providing temporary lodging facilities are allowed in the C-3 District. Therefore, the Board finds that the proposed project meets this requirement. **All agreed.**
  
- c. **Will not cause any adverse effect to property in the vicinity or in the Zoning District or the Township.** The small portion of the rear of the building that is in the Winsor Street side yard setback would be further setback than three structures across the road and will have landscape buffering. The taller height allows a smaller footprint and larger view corridor of the lake. Therefore, the Board finds that the proposed project will not cause any adverse affect. **Errol, Bart, and Phyllis agreed. Todd and David disagreed.**
  
- d. **Relates only to property that is under control of the applicant. All agreed.**
  
- e. **Affects only property subject to exceptional or extraordinary circumstances or conditions that do not generally apply to other property or uses in the vicinity, and have not resulted from any act of the applicant.** The parcel's unique pie shape at the northwest corner, along with a 50' setback from the water, creates a challenge to meet the 25' corner lot setback. The property is in a 2' floodplain and thus the first floor needs to be 2' above grade. The paved portion of Winsor Street encroaches on applicant's property and cannot be moved. Therefore, The Board finds that the proposed project will meet this requirement. **Errol, Bart, and Phyllis agreed. Todd and David disagreed.**

**The Board further finds the proposed project meets the above 5 variance criteria from Section 12.4C of the Zoning Ordinance. Errol, Bart, and Phyllis agreed. Todd and David disagreed.**

**The Board further finds that granting a variance would observe the Spirit of the Ordinance and provide substantial justice. Errol, Bart, and Phyllis agreed. Todd and David disagreed.**



*Due to the findings of fact as stated above, Bart Wangeman moved to approve Walloon Lake Holdings, LLC application dated 12-23-13 for a 10' height variance and a 15' Winsor Street side yard variance according to plan sheet A1.0 dated 12-13-13 prepared by Triumph Development, plan sheet C1.0 dated 12-12-13 by Performance Engineers, Inc., and plan sheet P1.0 dated 1-6-14 by Performance Engineers, Inc. for a lake-front 3-story, 36-room Lodge at the SW corner of M-75 and Winsor Street on Property ID # 15-010-009-095-00. The sideyard variance on Winsor Street is only applicable to a portion of the main structure. Motioned seconded by David Beier. Roll call vote: Todd-No, Phyllis-Yes, David-No, Errol-Yes, Bart-Yes. Motion carried.*

**VI. Other Matters to be Reviewed:**

**a. Discussion of Policies and Procedures:**

Errol noted our recently approved Rules of Procedure do not permit the Recording Secretary and Alternate Member positions to be held simultaneously by one individual. The Township Board of Trustees will need to make new appointments as necessary.

**b. Communication and Correspondence:** Randy suggested another variance request could come before the ZBA in March.

**c. ZBA Member Discussion:** Payroll for last year's August meetings was not submitted to the Township for payment. **David motioned to assign this responsibility to the Recording Secretary for payment to be made at the first opportunity, and for future payment to be made in December. Second by Todd. Motion carried.**

**d. Other:** Errol suggested the Planning Commission require an operable and accessible fire hydrant be provided if the proposed lodge is approved. This will address the Fire Chief's concern over the current location of an unusable hydrant. David also suggested concern over increased traffic and congestion on Winsor Street be considered by the Planning Commission.

**VII. Report from Planning Commission Representative:**

Bart summarized recent Planning Commission actions including ordinance amendments for property splits and allowed uses in the C-3 District..

**VIII. Citizen Comments:** None

**IX. Next Meeting:** Not scheduled, no cases pending at this time

**X. Adjournment:** Errol adjourned the meeting at 9:52 PM.

Prepared by:

ZBA Approval by:

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Tom Mackie, Acting Recording Secretary

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Todd Reeves, Secretary