

TOWN OF _____ ZONING BOARD OF APPEALS

RESOLUTION GRANTING USE VARIANCE # _____

WHEREAS, the Town of _____ Zoning Board of Appeals has received an application from _____ for a use variance to permit construction and operation of a marina repair/maintenance shop with commercial boat storage on vacant cleared land owned by _____ in the RCM-1 Zoning District; and

[WHEREAS, as required by General Municipal Law Section 239-m, the application was referred to the _____ County Planning Department for its review, and the County Planning Department recommended _____; and]

WHEREAS, on _____ the ZBA conducted a public hearing on the application, which was continued at the ZBA meeting on _____; and

WHEREAS, the ZBA determined that the Project is an Unlisted Action under the State Environmental Quality Review Act (SEQRA), and issued a SEQRA Negative Declaration;

NOW, THEREFORE, BE IT

RESOLVED, that the ZBA hereby determines that the applicant has shown that applicable zoning regulations and restrictions have caused unnecessary hardship and has demonstrated that the criteria for issuance of a use variance set forth in Section 175-95(C)(2)(b) of the Town Zoning Law have been met, as further discussed below:

1. The applicant has proven that the land cannot yield a reasonable return if used for any purpose allowed in the RCM-1 Zoning District. Inability to sell the property can serve as relevant evidence towards establishing the impossibility of realizing a reasonable return. The owner of the property has indicated that she attempted to sell the property on her own for one year at the assessed full market value. She then listed the property with a real estate broker

and re-listed it again for a total of 244 days before _____'s offer. During that time, the assessed full market value increased from \$29,500 to \$47,300 but the asking price of \$64,900 remained the same. However, according to the realtor, although three offers were received, all involved uses which are not permitted in the RCM-1 District and were abandoned. In addition, according to a letter from the real estate broker, the offers were from \$20,000 to \$38,000 which is below the assessed value. The current offer is for \$60,000 which is less than the asking price but more than the assessed full market value. It appears that the property cannot be sold for a reasonable price for an allowed use.

The offer contained in a document dated December 11, 2012 by the son and a tenant of a project opponent has not been established as a viable offer. The \$45,000 offer was for less than the \$47,300 assessed full market value of the property and less than the \$48,000 market value indicated by the appraiser engaged by that project opponent. It also required a seller-held first mortgage which the property owner indicated she was not willing to provide in this instance. The property owner did not accept this offer and it expired on December 18, 2012.

2. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. The location of the property virtually adjacent to _____ but approximately a mile from the nearest exit makes it a difficult site for either residential or commercial uses. Residential uses are reluctant to locate this close to _____ while commercial uses open to the public would prefer to be located closer to the exit. The property owner has indicated that she offered the property and \$50,000 to the Towns of _____ and _____ for use as a park, a use permitted with Site Plan Review, but neither Town took advantage of her offer. An additional unique feature is the location of the remains of a smith shop and home belonging to _____ which the property owner seeks to preserve and which would be able to be preserved with the current proposal.

3. The requested use variance will not alter the essential character of the neighborhood. The neighborhood is primarily residential in nature but contains structures of a more commercial nature. The applicant has indicated that although the business will be open year-round, he does not anticipate customers at the site because they would typically contact him at his business on _____ and the building will not have an office. The building is for storage and a shop and will be used only by the applicant and his employees and only during regular business hours for the majority of the year. Boats stored outside for the winter will typically be shrink-wrapped during September, October and November and the wrappings will be removed and the boats moved between April and Memorial Day. During the summer months there should be no boats and only a few trailers. Any visual impact could be reduced by appropriate screening. Noise and odors from boat repair will generally be contained within the building and the applicant has indicated that he will not be doing any fiberglass work or pump-outs. The entrance will be from _____ with no access to _____. As the property is currently a vacant field, any use would have some effect on the character of the neighborhood. It is also likely that many of the uses permitted with Site Plan Review would have greater impacts on the neighborhood than the proposed use.

4. The alleged hardship has not been self-created. The property owner did not purchase the property but inherited it from her parents. The property has been in the family for four generations and during that time the area has become less desirable for certain types of development. Therefore, the hardship has not been self-created.

FURTHER RESOLVED, that the ZBA grants the application for a use variance [with the following conditions, subject to more restrictive conditions which may be imposed by the Planning Board during Site Plan Review:

1. Vegetative buffers shall be maintained or planted around the entire perimeter of the property.

2. Access shall be from _____ only with no access to _____.
3. Lighting shall be only two flood lights on the building and motion detector lights on the parking lot and the door; there will be no lighting in or on the boat storage area.
4. No fiberglass work or pump-outs shall be conducted at the site.
5. The building shall be used for storage and shop purposes only by the applicant and his Staff, with no public access.]

FURTHER RESOLVED, that the variance granted is the minimum variance necessary which will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.