

TOWN OF _____ ZONING BOARD OF APPEALS
RESOLUTION DENYING 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 not shown that applicable zoning regulations and restrictions have caused unnecessary hardship and has not 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 not proven that the land cannot yield a reasonable return if used for any purpose allowed in the RCM-1 Zoning District. Uses permitted in this District as-of-right are essential public service, open space recreation and single family dwelling. Uses permitted with Site Plan Review are accessory apartment, convenience store, day care center, dude ranch, group

camp, health-related facility, light industrial use, major public utility use, multiple-family dwelling, public parks and playgrounds, professional office, public utility use, restaurant, retail use, riding academy, private sand, gravel or topsoil extraction; temporary, portable sawmill; self-service storage facility, cross-country ski center and commercial storage.

The applicant has not presented specific information relating to the suitability of the site for the uses permitted under the Zoning Law. Although the inability to sell the property can serve as relevant evidence towards establishing the impossibility of realizing a reasonable return, sufficient information has not been provided regarding advertising, pricing, offers and terms of sale to establish that the property cannot be sold for a permitted use. The owner of the property has indicated that she attempted to sell the property on her own for one year, which is typically unsuccessful. She then listed the property with a real estate broker and re-listed it again before _____'s offer. The information provided about the timing, asking prices and assessed value seems inconsistent and incomplete. For example, the assessed value is indicated as being \$31,901 in 2008, \$29,500 in January, 2012 and \$47,300 in September, 2012. The property owner indicates in one statement that she listed the property in July, 2011 but that she engaged a realtor in February, 2012 in another statement, and the realtor indicates in a letter dated November 30, 2012 that the property was listed for 244 days or approximately 8 months, which would indicate a listing in March or April of 2012. No details are provided for the three offers, including the uses that were envisioned but not permitted in the RCM-1 zone. It is unclear even from the property owner's own submissions whether the property was originally listed at \$109,000 or \$64,900. Even at \$64,900 and an assessed value of \$47,300, the asking price represents an approximately 36% increase over the assessed value. This seems unrealistic in light of the recent real estate market. Although the property owner indicates that three real estate brokers felt that the property could be sold for \$60,000 - \$65,000, no specifics are provided such as the names of these individuals or statements from them. Finally, no information

is provided on the typical length of time that vacant land is on the market before it sells and this property does not seem to have been on the market for an unreasonable length of time.

2. The applicant has not described any specific hardship relating to the property that would demonstrate that 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 proposed use would require a variance on any site in this Zoning District. Marina uses are permitted with Site Plan Review in the RS-1, RS-2, RSH and RCH-LS Zoning Districts and commercial boat storage is permitted with Site Plan Review in the RCH-LS District. The significance of the historic nature of the property has not been substantiated by any correspondence with the New York State Office of Parks, Recreation and Historic Preservation or any other historic preservation agency or organization. In addition, although historic structures on the property may not be damaged by the proposed use, there is no formal agreement that would protect the structures in the future. There is nothing unique about the location or characteristics of the property. Therefore, it appears that the only alleged hardship related to siting the proposed use is not unique to this property, but would apply to the entire Zoning District.

3. The requested use variance would alter the essential character of the neighborhood. The character of this neighborhood is residential, though there are some rental residences and small-scale commercial uses associated with residential uses. The construction of a 40'x56' foot metal building and storage of 100 shrink-wrapped boats would have a significant effect on the visual appearance of the neighborhood. In addition, the traffic generated in Spring and Fall would create noise and congestion along _____ in the area. The applicant has indicated that the boat motors will be run outside to reach operating temperature, which will create noise as well as odors.

4. The hardship related to siting the proposed use has been self-created. As there is apparently no compelling reason to choose this particular site as the location of the proposed use, the applicant could choose a site in one of the Zoning Districts which permit this use without a variance.

FURTHER RESOLVED, that for all the reasons stated above the ZBA denies the application for a use variance.

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