

TOWN OF _____ ZONING BOARD OF APPEALS

RESOLUTION APPROVING AREA VARIANCE # _____

WHEREAS, _____ (the "Applicants") are proposing to replace an existing seasonal residence on property located at _____ (the "Project") and have applied to the Town of _____ Zoning Board of Appeals ("ZBA") for area variances of 4.6' from the rear yard setback and 1.5' from the right side yard setback requirements of Section 175-16 (Schedule II) of the Town Zoning Law; and

WHEREAS, the ZBA believes that the existing structure, including the two decks, has received all necessary permits and approvals from the Town; and

[WHEREAS, as required by General Municipal Law Section 239-m, the variance application was referred to the Warren County Planning Board for its review and at its meeting on _____, 2011 the County Planning Board voted to recommend _____ of the variance; and]

WHEREAS, the ZBA (1) conducted a public hearing on December 17, 2009 for the previous variance application for the property submitted by _____ ("_____"), (2) reviewed a smaller proposal for the property which was presented by _____ on behalf of the Applicants on July 21, 2011 and (3) conducted a public hearing on the current application submitted by the Applicants on September 15, 2011 which was continued to this meeting; and

WHEREAS, Planning Board approval will be required for the Project; and

WHEREAS, the ZBA has reviewed, considered and deliberated about the variances requested and the written and verbal comments received in connection with the variance application;

NOW, THEREFORE, BE IT

RESOLVED, that the ZBA hereby determines that the application meets the requirements set forth in Section 175-95(C)(3) of the Zoning Ordinance for issuance of an area variance as further discussed below.

1. An undesirable change will not be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting

of the area variance. The variances would permit expansion of the footprint of the structure by 130 square feet by squaring off the northwest corner. The 130 square foot increase would result in an approximately 16% increase in the footprint of the living area from 810 square feet to 940 square feet. The usable square feet of the residence would be further expanded by adding a 650 square foot basement area below a portion of the ground level structure within both the existing footprint and the expansion area. As the lot slopes, this would result in less than 3' in height increase from the existing single story structure. The size of the decks would not be increased. Although the proposed increase in total indoor square footage is approximately 90%, because the footprint would be only slightly increased as a result of granting the variances and the majority of the new area would be located under the ground level structure, the visual impact of the expansion into the area permitted by the variances would be minimal. The number of bedrooms would remain at two, so no increase in use would be generated by granting the variances. As there have been other area variances granted for this neighborhood as structures are renovated or replaced, the structure would not be significantly different in appearance from other residences in the neighborhood. The requested variances would not produce an undesirable change in the character of the neighborhood as the visual impact would be minor, there would be no change in the intensity of use and several nearby structures have been similarly enlarged.

2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than area variances. The applicant seeks to increase the size of the two bedrooms and add a second bathroom and closets. It appears that the only way to achieve this goal is to expand the structure. Due to the small size of the lot, almost any horizontal expansion would require area variances. The Project utilizes only a small increase in the footprint of the structure with the majority of the additional space located in a new basement area. Reducing the size of the new basement area would not significantly reduce the impact of the expansion because it is mostly within the current footprint. The area to be squared off, which causes the need for the variances, could be reduced. However, as a practical matter it is reasonable to square this corner of the building when it is replaced. The proposed variances would allow expansion of the structure to achieve the Applicants' goals without significantly increasing either its footprint or its height.

3. The requested area variances are not substantial. The variances for the new portion of the structure are 12% from the rear setback requirement and 10% from the side setback requirement. These are not substantial percentages and would not be substantial in actual effect, particularly in light of the fact that the existing structure is not in compliance with the setback requirements. The area to be squared off would be only slightly closer to the side property line than the existing structure and actually farther from the rear property line. The variances are not only minor in terms of percentage of required setback but also in terms of practical effect.

4. The proposed variances would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The variances would not result in increased usage of the residence as the number of bedrooms would remain at two. The variances would allow a 130 square foot increase in the footprint of the structure, which means that the impervious surfaces on the lot could be increased by that amount. Although this could increase stormwater runoff from the site, the Applicants have indicated that they will comply with any stormwater management requirements imposed by the Planning Board when it reviews the Project to prevent any impacts to surface water. This will be included as a condition to approval of the variances. The existing septic system is sized appropriately for a two-bedroom residence. Therefore, there would not be any impact to the groundwater as a result of the proposed variances. The existing leach field is over 100 feet from the stream, so there would not be an impact to surface water.

5. The alleged difficulty is largely self-created. The property was the subject of a similar area variance application submitted by the previous owner at the time the Applicants purchased the property. The Applicants were fully aware of the existing variance application and authorized the previous owner to continue to pursue the variances on their behalf. Therefore, the Applicants were well aware of the need for variances before they bought the property. However, this does not prevent the ZBA from granting the requested variances.

6. The proposed variance is the minimum variance that is necessary and adequate to achieve the applicant's goal and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. As noted above, granting the requested variances to square off a corner of the building would have only a small impact. However, that is the most practical configuration for expansion of the area of the structure. A smaller

variance which did not square off the corner could possibly achieve the Applicants' goals, but it would not significantly reduce potential impacts of the Project and would complicate construction of the new structure.

7. The benefit to the applicant if the variances are granted would outweigh the potential detriment to the health, safety and welfare of the neighborhood or community. As discussed above, granting the variances would not have a significant visual impact on the neighborhood as the height of the structure would not be significantly increased and the footprint would be only slightly increased. There would be no increase in the intensity of use of the residence as the number of bedrooms would remain at two and there would not be any environmental effects because the septic system is appropriate for a two-bedroom residence. The Applicants have indicated that they will comply with any requirements relating to stormwater management imposed by the Planning Board. However, granting the variances would increase the Applicants' enjoyment of their property as a result of larger bedrooms, an additional bathroom and closets. Therefore, the benefit to the Applicants is determined to be greater than the potential detriment to the community.

FURTHER RESOLVED, that the ZBA therefore grants the requested area variance [subject to the following conditions:

- A. The Applicants shall prepare a Stormwater Management Plan to submit to the Planning Board and shall comply with any requirements relating to stormwater management imposed by the Planning Board.
- B. If ledge rock is encountered at the site of the structure, the size of the basement floor plan will be reduced if necessary to ensure that the height of the structure will not be increased to accommodate the rock and no blasting will take place.]

Duly adopted this ____ day of _____, 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT: